JUDICIAL UPDATE

2006 - 2007 CASE LAW ON AMERICAN INDIANS

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UNITED STATES SUPREME COURT

1. ***BP America v. Burton, et al.***, Docket No. 05-669. **Affirmed** on Dec. 11, 2006. **Issues:** Does limitations period in 28 U.S.C. § 2415(a) apply to federal agency orders requiring payment of money claimed under lease or other agreement? **Holding**: Administrative payment orders issued by the Interior Department's Minerals Management Service assessing royalty underpayments on oil and gas leases are not covered by the general six-year statute of limitations for government contract actions set out in 28 U.S.C. § 2415(a). **Holding below:** *Amoco Production Co. v. Watson*, D.C. Cir., 410 F.3d 722 (D.C. Cir.). Department of Interior reasonably interpreted Mineral Leasing Act and its own regulations when it adopted rules for valuation, for royalty computation purposes, of natural gas extracted by lessees from government property that obligate lessees to put gas in "marketable condition at no cost to" government by, inter alia, removing impurities from gas, including removal of excess carbon dioxide from coalbed methane gas, thereby forbidding producers who remove excess carbon dioxide from deducting cost of doing so from gross proceeds on which royalties are based, and requiring producers selling untreated methane at lower price to add to their gross proceeds costs incurred by purchasers of methane at wellhead in removing excess carbon dioxide after transporting it to treatment plant; government agency's administrative compliance order demanding additional royalties owed under Mineral Leasing Act and its regulations, defiance of which incurs notice of noncompliance and subsequent civil penalties, is not "action for money damages" initiated by filing "complaint," and thus limitations period of 28 U.S.C. § 2415(a) is inapplicable.

2. ***Zuni Public School Dist., et al. v. Department of Educ., et al.***, No. 05-1508, 550 U.S. _____ (2007). **Affirmed** on April 17, 2007. **Issues**: (1) Does secretary of education have authority to create and impose his equalization formula under federal impact aid program over one prescribed by Congress and through this process certify New Mexico's operational funding for fiscal year 1999-2000 as "equalized," thereby diverting impact aid subsidies to state? (2) Is this one of rare cases in which this court should exercise its supervisory jurisdiction to correct plain error that affects all state school districts that educate federally connected children? **Holding below**: *Zuni Public School Dist. No. 89. v. United States Dep't of Educ.*, (en banc 437 F.3d 1289, en banc 393 F.3d 1158 for previous), 10th Cir. Equally divided court affirmed secretary of education's decision that State of New Mexico's funding for its public schools was "equalized" for year in question under 20 U.S.C. § 7709(b) and corresponding regulations at 34 C.F.R. § 222.162(a), thereby permitting state to offset its contributions to local school districts by at least part of federal grants to those districts under federal impact aid program.

OTHER COURTS

A. ADMINISTRATIVE LAW

3. ***Golden Hill Paugussett Tribe of Indians v. Rell***, No. 2:92cv738, 2006 WL 3422150 (D. Conn. Nov. 29, 2006). Indian group brought actions under the Non-Intercourse Act against various individuals and corporations and the state of Connecticut, seeking restoration of lands and damages. Following dismissal of consolidated actions, 839 F. Supp. 130, the appellate court, 39 F.3d 51, reversed, ordering a stay pending resolution by the Bureau of Indian Affairs ("BIA") of group's petition for federal tribal recognition, rather than dismissal. After the BIA denied the petition, group moved to reopen its original complaint. Defendants moved for judgment on the pleadings or for dismissal. The district court held that group was precluded from demonstrating that it was an Indian tribe.

4. ***Cermak v. U.S., ex rel. Dep't of Interior***, No. 06-1686, __ F.3d __, 2007 WL 601486, (8th Cir. Feb. 28, 2007). In 1944, the Bureau of Indian Affairs ("BIA") issued Indian Land Certificates 64 and 65, assigning the right to possess fifty acres of Indian trust land "John Cermak and his heirs . . . for the exclusive use and benefit of [Cermak] so long as [Cermak] or his . . . heirs occupy and use said land." Cermak's son and grandson sought to enforce rights as heirs under the Certificates. The BIA denied the claim, and the Interior Board of Indian Appeals affirmed the denial. The district court upheld the final agency action under the Administrative Procedure Act and transferred remaining non-APA claims to the Court of Federal Claims for further proceedings. Stanley and Raymond Cermak appealed. Court of Federal Claims affirmed.

5. ***Rosales v. United States***, No. 03-1117, __ F. Supp. 2d __, 2007 WL 706959 (D.D.C. Mar. 8, 2007). This matter was before the court on the parties' Motions for Summary Judgment. Plaintiffs brought suit under the Indian Reorganization Act of 1934, and the Administrative Procedure Act seeking an order declaring: (1) that the Jamul Indian Village Constitution has not been lawfully amended; (2) that the elections of 1997, 1999, and 2001, held by the faction using the lowered blood quantum to determine an individual's qualifications to vote, were not lawful; (3) that the BIA's decision of Oct. 15, 1996, and the IBIA's decisions of July 29, 1999 and Mar. 4, 2003, must be reversed and vacated; and (4) that the Government must recognize the 1997, 1999, and 2001 election of Plaintiffs as officers of the Village, pursuant to the terms of the original Village Constitution. The court denied Plaintiff's Motion For Summary Judgment, granted Defendants' Cross-Motion for Summary Judgment and dismissed the case.

6. ***Central New York Fair Business Ass'n v. Kempthorne,*** No. 6:06-CV-1501, 2007 WL 1593727 (N.D.N.Y. June 1, 2007). Plaintiffs filed an action seeking declaratory and injunctive relief related to the Bureau of Indian Affairs' ("BIA") handling of five land-into-trust applications filed by Indian tribes in New York State. They asserted that federal question jurisdiction exists under 28 U.S.C. § 1331, pursuant to the Administrative Procedure Act and the Declaratory Judgment Act. Plaintiffs further asserted that the United States has waived its sovereign immunity from suit. In lieu of an answer, defendants filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and (6). The five land-into-trust applications pending before the Secretary with regard to land within New York State are: (1) the Oneida Indian Nation of New York applied for trust acquisition for approximately 17,000 acres in Oneida and Madison

7. ***South Dakota v. U.S. Dep't of Interior,*** No. 06-1150, __ F.3d __, 2007 WL 1574588 (8th Cir. June 1, 2007). State of South Dakota and county brought action for declaratory and injunctive relief against decision of the Department of the Interior ("DOI") to take land purchased by Indian tribe into trust for tribe. The district court, 401 F. Supp. 2d 1000, granted summary judgment for DOI. State and county appealed. On grant of rehearing, the appellate court held that: (1) DOI authority to place land in trust was not an unconstitutional delegation of legislative power; (2) Secretary of the Interior acted within his statutory authority in acquiring land in trust for Indian tribe; and (3) Secretary adequately considered potential jurisdictional and land use problems in deciding to take land into trust. Affirmed.

8. ***Williams v. Gover,*** No. 04-17482, __ F.3d __, 2007 WL 1761029 (9th Cir. June 20, 2007). Potential members of restored Indian tribe, who had been "squeezed" out of tribe as result of decision to limit tribal membership solely to lineal descendants of those who had received distributions in connection with earlier termination of tribe, brought suit against federal government for allegedly promulgating rule in violation of requirements of the Administrative Procedure Act and for allegedly violating their due process rights. The district court entered an order dismissing case on defendants' motion to dismiss and for entry of summary judgment. Plaintiffs appealed. The appellate court held that: (1) Bureau of Indian Affairs did not promulgate rule regarding membership in tribe, of the kind subject to notice and comment procedure of the Administrative Procedure Act; and (2) potential members of restored tribe were not denied due process of law when tribal membership was narrowly defined by Indian tribe itself. Affirmed.

9. ***Carcieri v. Kempthorne,*** No. 03-2647, 2007 WL 2069544 (1st Cir. July 20, 2007). State and town petitioned for review of decision of the Department of the Interior ("DOI") which accepted a 31-acre parcel of land into trust for benefit of Indian tribe. The district court, 290 F. Supp. 2d 167, granted summary judgment for DOI, and appeal was taken. On rehearing en banc, the appellate court held that: (1) DOI's construction of Indian Reorganization Act ("IRA"), as allowing trust acquisitions for tribes that were recognized and under federal jurisdiction at time of the trust application, was entitled to Chevron deference; (2) Bureau of Indian Affairs ("BIA") did not act arbitrarily and capriciously, in violation of the Administrative Procedure Act ("APA"), when deciding to take land into trust for Indian tribe; and (3) BIA satisfied its responsibilities under the National Environmental Policy Act ("NEPA") by issuing a finding of no significant impact. Affirmed.

10. ***St. Pierre v. Norton,*** No. 03-1057, __ F. Supp. 2d __, 2007 WL 2178065 (D.D.C. July 31, 2007). Plaintiffs, Cecilia and Leonard L. Prescott, members of the Shakopee Mdewakanton (Dakota) Sioux Community ("SMSC"), brought suit under the Administrative Procedure Act ("APA"), challenging Defendants' decisions and actions with respect to the Tribe's membership. Plaintiffs alleged that Defendants' actions allowed unqualified members to

B. CHILD WELFARE LAW ("ICWA")

11. ***In re C.L.J.***, No. 2050367, 2006 WL 1719944 (Ala. Civ. App. June 23, 2006). In April 2003, the Department of Human Resources ("DHR") removed C.L.J. ("the child") from the custody of her mother, E.J., and placed her in protective custody. Two years later the Chickasaw Nation moved to intervene in the action, alleging that the child is an Indian Child and eligible for membership in the Chickasaw Nation. The appellate court found that that the Indian Child Welfare Act applied to the case, that the case was in an advanced stage in the proceeding, that the evidence necessary to decide the case could not be adequately presented to the tribal court without undue hardship to the witnesses and parties, that in accordance with the ICWA the court did find good cause to the contrary to deny the motion to transfer to the tribal court and denied the motion to transfer to tribal court.

12. ***In re Interest of Walter W.***, No. 05SC686, 2006 WL 1889151 (Neb. Ct. App. July 11, 2006). Having found that the State did not comply with the plain language of § 43 1505(1), which provides that "[n]o . . . termination of parental rights proceedings shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the secretary," the appellate court concluded that the termination hearing conducted in the case was invalid, vacated the order of termination, and remanded the cause to the juvenile court for further proceedings to be conducted following provision of proper notice to the Yankton Sioux Tribe.

13. ***In re Adoption of Erin G.,*** No. S-11929, 2006 WL 2217487 (Alaska Aug. 4, 2006). David L., the putative father of Erin G., invoked Indian Child Welfare Act ("ICWA"), seeking to set aside the decree granting the petition to adopt Erin G. The superior court held that AS 25.23.140(b), Alaska's one-year statute of limitations for challenging adoption decrees, barred David's petition. He appealed. The appellate court found that Congress apparently

14. ***In re Adoption of Hannah S***., No. C048581, 48 Cal. Rptr. 3d 605 (Cal. Ct. App. Sept. 8, 2006). Non-Indian mother filed petition to terminate parental rights of father to free minor for adoption by stepfather. Indian tribe, in which minor was enrolled member through father, was allowed to intervene. The superior court denied the petition, and mother appealed. The appellate court held that: (1) it would decline to adopt the judicially created "existing Indian family doctrine" exclusion from the protections of the Indian Child Welfare Act (ICWA); (2) "good cause" exception to evidentiary requirements of ICWA did not apply under circumstances where anticipated placement was with child's mother; (3) under ICWA, mother had to prove by clear and convincing evidence that she made active efforts to prevent breakup of Indian family; and (4) mother carried her burden of proving that she made reasonable, active efforts to preserve minor's relationship with father. Reversed.

15. ***In re Adoption of R.L.A.,*** No. 103,076, 2006 WL 3332266 (Okla. Civ. App. Sept. 22, 2006). The mother and stepfather of the minor child, R.L.A., appealed the denial of their Application For Order Determining Child Eligible For Adoption Without Consent of Natural Parent, arguing the trial court incorrectly applied the Indian Child Welfare Act and required them to prove the factual bases for their application by proof beyond a reasonable doubt. The court concluded that the heightened burden of proof required by 25 U.S.C. § 1912(f) applies only to the federally required determination "that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child," reversed the trial court's order and remanded the case for determination based upon the correct burden of proof.

16. ***In re People ex rel. S.R.M.***, No. 06CA0665, 2006 WL 3437650 (Col. Ct. App. Nov. 30, 2006). The Citizen Potawatomi Nation ("CPN") appealed from the judgment terminating parental rights as to S.R.M. Pursuant to 25 U.S.C. § 1914, the CPN sought to invalidate the judgment because notice was inadequately given under the Indian Child Welfare Act of 1978. The appellate court vacated the judgment terminating parental rights, affirmed the order denying relatives' motion without prejudice to renew the motion following remand, and remanded for further proceedings.

17. ***Cutright v. State of Arkansas,*** No. CA 06-49, 2006 WL 3505547 (Ark. Ct. App. Dec. 6, 2006). Cutright appealed from the circuit court's decision granting custody of Alexia and Andria Sanders to Patrick and Virginia Swartz. On appeal, Cutright argued that the circuit court erred by not following the preferential placement guidelines of the Indian Child Welfare Act of 1978. Because the circuit court failed to determine that there was good cause to deviate from the preference of the Tohono O'odham Nation that the children should be placed with their siblings, the appellate court reversed and remanded for an award of custody of Alexia and Andria Sanders to appellant.

18. ***State, Dep't of Health and Social Serv., Div. of Family and Youth Serv. v. Native Village of Curyung,*** No. S-11355, 2006 WL 3691727 (Alaska Dec. 15, 2006). Several Alaska native villages brought suit under 42 U.S.C. § 1983 against the state of Alaska and the Acting Director of the Division Of Family And Youth Services. The villages alleged ongoing systematic violations of the Adoption Assistance Act and the Indian Child Welfare Act. The

19. ***In re Petition of Phillip A.C., II***, No. 45119, 2006 WL 3804877 (Nevada Dec. 28, 2006). After petition to adopt child was granted, tribal council sought to intervene and invalidate adoption. The district court vacated the adoption. Adoptive father appealed. The Supreme Court held that: (1) trial court possessed jurisdiction to consider tribal council's motion to intervene and to invalidate adoption of child; (2) voluntary dismissal was ineffective as to mother and tribal council; (3) affidavit of tribal council's enrollment officer was admissible to establish that child was a Native American child and was subject to the Indian Child Welfare Act (ICWA); (4) tribal council had independent standing to contest adoption of Indian child; and (5) adoptive father was entitled to an opportunity to challenge enrollment officer's authority to attest to mother and child's status with tribe.

20. ***In re Robert A.,*** No. D048994, 2007 WL 178327 (Cal. Ct. App. Jan. 25, 2007). In dependency proceedings, the Superior Court ordered the removal of a child from his father's custody. Father appealed. The appellate court held that county social services agency failed to comply with Indian Child Welfare Act. Reversed and remanded with directions.

21. ***Alyssa B. v. Department of Health & Social Services, Division of Family & Youth Services,*** No. S-12410, 2007 WL 2333330 (Alaska Aug. 17, 2007). Alyssa B. claimed, among other things, that the superior court lacked jurisdiction because her daughter is an Indian child under the Indian Child Welfare Act ("ICWA"). She contended that ICWA applies because the child's father is a native Hawaiian. The court found that the act defines "Indian tribe" as "any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village" and that native Hawaiians are not recognized by Congress as Indian tribes for the purposes of applying ICWA. The court found that the claim lacked merit and affirmed the superior court ruling.

C. CONTRACTING

22. ***Oglala Sioux Tribe v. C & W Enter., Inc.,*** No. 06-3480, 487 F.3d 1129, 2007 WL 1661909 (8th Cir. June 11, 2007). The Oglala Sioux Tribe's department of transportation entered into four road contracts with C & W Enterprises (C & W). Three of the contracts contained arbitration clauses. The terms of the fourth contract, the "Base and Blotter Project" contract, required that disputes on that contract be resolved in tribal court. The tribe also granted C & W a lease that entitled C & W to mine gravel on tribal land. The gravel lease does not contain a dispute resolution provision. After problems arose between the tribe and C & W, C &

23. ***United States v. Hump,*** Bankruptcy No. 05-30175, 2007 WL 1879148 (D.S.D. June 26, 2007). Farmers State Bank of Faith ("Bank") filed an adversary complaint against Debtors David and Karen Hump ("Humps"). The U.S., acting through the Bureau of Indian Affairs ("BIA"), was substituted for the Bank as plaintiff. Plaintiffs sought: (1) a determination of the status and validity of the Hump's ownership of certain Trust Land exchanged or to be exchanged with the Cheyenne River Sioux Indian Tribe; (2) a determination of the validity of the Bank's mortgage on certain Trust Land conveyed or to be conveyed by the Cheyenne River Sioux Indian Tribe to the Humps; (3) the entry of a judgment granting the bank an equitable lien on certain Trust Land conveyed or to be conveyed by the Cheyenne River Sioux Indian Tribe to the Humps; (4) alternatively, the entry of a judgment granting the bank an equitable lien on certain Trust Land currently owned by the Humps; (5) the entry of a judgment subordinating to the bank's claim the interest and claims of the Humps and their other creditors in and to certain Trust Land conveyed or to be conveyed by the Cheyenne River Sioux Indian Tribe to the Humps; and (6) alternatively, the entry of a Judgment subordinating to the Bank's claim the interest and claims of the Humps and their other creditors in and against certain Trust Land currently owned by the Humps. The Court concluded that while the BIA demonstrated there was no genuine issue of material fact in the case, it did not demonstrate it is entitled to a judgment as a matter of law. The record instead demonstrated the Humps were entitled to a judgment as a matter of law. The court denied the BIA's motion for summary judgment and entered summary judgment for the Humps.

24. ***Cheyenne River Sioux Tribe v. Kempthorne,*** No. CIV 06-3015, __ F. Supp. 2d __, 2007 WL 2022180 (D.S.D. July 10, 2007). Indian tribe brought action against Secretary of the Interior under Indian Self-Determination and Education Assistance Act ("ISDEAA"), challenging declination of tribe's proposed amendments to contract for provision of educational services at schools operated by Bureau of Indian Affairs. Tribe and Secretary filed cross-motions for summary judgment. The district court, held that letter declining tribe's proposed amendments failed to comply with ISDEAA, in that it failed, inter alia, to provide detailed explanation for decision. The court granted the Tribe's motion and denied the Secretary's motion.

D. EMPLOYMENT

25. ***Davidson v. Mohegan Tribal Gaming Auth.***, No. 27001, 903 A.2d 228 (Conn. App. Ct. Aug. 15, 2006). Former casino employee brought action against tribal gaming authority and casino, alleging that his rights under tribe's discriminatory employment practices ordinance had been violated. Defendants filed motion to dismiss for lack of subject matter jurisdiction. The Superior Court granted defendants' motion to dismiss. Former employee appealed. The appellate court held that trial court lacked subject matter jurisdiction over action. Affirmed.

26. ***Equal Employment Opportunity Comm'n v. Peabody Western Coal Co.,*** No. CV 01-01050-PHX-MHM, 2006 WL 2816603 (D. Ariz. Sept. 30, 2006). EEOC filed a complaint against Peabody Western Coal Company ("Peabody Coal") asserting a violation of Title VII of the Civil Rights Act of 1964 as amended ("Title VII") based upon the preference afforded to hiring Navajos over non-Navajo Native Americans in coal mining operations. Peabody Coal moved for summary judgment on the grounds that: (1) the Navajo Nation is a necessary and indispensable party to the litigation and its joinder not being feasible under Rule 19(b) and, in the alternative, (2) the case presented a nonjusticiable political question. The court held that dismissal was proper because the Navajo Nation was a necessary and indispensable party to the litigation and could not be made a party to the litigation by the EEOC. The court also granted summary judgment on the alternative basis that the case presented a nonjusticiable political question. The EEOC appealed and the Ninth Circuit reversed and remanded the decision, holding that it would not reach the merits of the EEOC's claims but that the Navajo Nation is a necessary party to the action and that it is feasible to join it. *EEOC v. Peabody Western Coal Co.*, 400 F.3d 774 (9th Cir. 2005). The Ninth Circuit also held that the EEOC's claim is not precluded as a nonjusticiable political question. EEOC filed its Amended Complaint naming both Peabody Coal and the Navajo Nation as defendants, seeking monetary relief against Peabody Coal and a "permanent injunction enjoining Peabody . . . and all persons in active concert or participation with it, from engaging in discrimination on the basis of national origin." The Amended Complaint expressly joined the Navajo Nation under Rule 19. Before the court was defendant Navajo Nation's Motion to Dismiss for Lack of Subject Matter Jurisdiction, Lack of Personal Jurisdiction, Insufficiency of Process, Failure to State a Claim, Lack of Capacity, Failure to Exhaust Tribal Remedies and Failure to Join the United States as an Indispensable Party. The court found that dismissal of the EEOC's lawsuit is warranted for several reasons. First, the EEOC sought affirmative relief against the Navajo Nation in the form of injunctive relief enjoining the Navajo Nation from requiring and enforcing its Navajo employment preference provisions. This affirmative relief is contrary to Title VII's exemption of Indian tribes from suit. Because the Navajo Nation is immune from such suit it cannot be a party to the litigation, making it a necessary and indispensable party pursuant to Fed. R. Civ. P. 19 Second, because the EEOC sought affirmative relief against the Navajo Nation, the EEOC's suit is contrary to the Rules Enabling Act and runs afoul of proper procedural requirements when asserting a suit against a government respondent. Third, the Rehabilitation Act expressly authorizes the employment preference provisions at issue in the litigation, thus invalidating the EEOC's claims as a matter of law. The court granted the Navajo Nation's Motion to Dismiss

27. ***Deschenie v. Board of Educ. of Central Consolidated School Dist. No. 22***, No. 05-2270, __ F.3d __, 2007 WL 140737 (10th Cir. Jan. 22, 2007). Deschenie, formerly Director of Indian Education and Bilingual Education for a school district located mostly within the Navajo Indian Reservation, brought § 1983 action against school district's board of education

28. ***San Manuel Indian Bingo & Casino v. National Labor Board Relations***, No. 05-1392, __ F.3d __, 2007 WL 420116 (D.C. Cir. Feb. 9, 2007). The San Manuel Band of Mission Indians owns and operates a casino on its reservation as a "tribal governmental economic development project." This proceeding arose out of a competition between the Communication Workers of America and the Hotel Employees & Restaurant Employees International Union, each seeking to organize the Casino's employees. The Tribe does not contract with an independent management company to operate the Casino and many Tribe members hold key positions at the Casino; however, the Tribe employs a significant number of non-members. The appellate court considered whether the National Labor Relations Board (the "Board") may apply the National Labor Relations Act, 29 U.S.C. §§ 151 *et seq*. (the "NLRA"), to employment at the casino. The appellate court found that application of the NLRA to the San Manuel Casino would not significantly impair tribal sovereignty, and federal Indian law does not preclude the Board from applying the NLRA. Given that the Board's decision as to the scope of the term "employer" in the NLRA constitutes "a permissible construction of the statute," the appellate court upheld the Board's conclusion finding the NLRA applicable.

29. ***Ferguson v. SMSC Gaming Enter.,*** No. 06-CV-3743, __ F. Supp. 2d __, 2007 WL 536174 (D. Minn. Feb. 15, 2007). African-American employee of Indian casino brought Title VII action against entity that operated casino and his supervisor. Defendants moved to dismiss for lack of subject matter jurisdiction. The district court held that: (1) entity that operated Indian casino was immune from Title VII action; (2) tribe's sovereign immunity protected supervisor from claims against supervisor in his official capacity; and (3) Title VII does not allow claims against Indian tribes or against employees in their individual capacity. Defendants' motion granted.

30. ***Barnes v. Mashantucket Pequot Tribal Nation***, No. 3:06-CV-693, 2007 WL 735704 (D. Conn. Mar. 5, 2007). Plaintiff brought action against his former employer, the Mashantucket Pequot Tribal Nation ("Tribe"), and five of its employees, alleging employment discrimination in violation of 42 U.S.C. §§ 2000e, *et seq*. ("Title VII"), 42 U.S.C. §§ 12101, *et seq*. ("ADA"), and 29 U.S.C. §§ 701 *et seq*. ("Rehabilitation Act"). The court granted the Tribe's motion to dismiss for lack of subject matter jurisdiction based on tribal immunity.

31. ***Aroostook Band of Micmacs v. Ryan,*** Nos. 06-1127, 06-1358, 484 F.3d 41 (1st Cir. Apr. 17, 2007). Indian tribe challenged state's authority to enforce state employment discrimination laws against it. Parties consented to final disposition by magistrate judge. The district court, 307 F. Supp. 2d 95, dismissed for lack of subject matter jurisdiction. Tribe appealed. The appellate court, 404 F.3d 48, reversed in part, vacated in part, and remanded. On remand, the district court, 403 F. Supp. 2d 114, granted judgment for tribe. State appealed. The appellate court held that: (1) federal Aroostook Band of Micmacs Settlement Act ("ABMSA") did not alter federal Maine Indian Claims Settlement Act ("MICSA") which subjected Aroostook

32. ***Houlton Band of Maliseet Indians v. Ryan,*** No. 06-1774, 484 F.3d 73, (1st Cir. Apr. 17, 2007). Native American Indian tribe brought action against executive director of Maine Human Rights Commission, former tribe employee, and others, seeking injunctive and declaratory relief to stop the Commission from proceeding with former employee's employment discrimination claim against tribe and to bar future discrimination claims. The district court, 2006 WL 897660, dismissed action. The appellate court held that the Maine Indian Claims Settlement Act allowed Maine to enforce its employment discrimination laws against Indian tribes located in the state. Affirmed.

33. ***Beecher v. Mohegan Tribe of Indians of Connecticut***, Docket No. 17546, 918 A.2d 880 (Conn. Apr. 24, 2007). Former employee of tribal gaming commission brought vexatious litigation claim against Native American tribe. The superior court granted tribe's motion to dismiss. Employee appealed, and appeal was transferred. The Supreme Court held that tribe's extortion lawsuit against employee did not constitute a blanket waiver of tribal sovereign immunity in the extortion action or in employee's subsequent vexatious litigation lawsuit. Affirmed.

34. ***Aleman v. Chugach Support Serv., Inc.,*** No. 06-1461, __ F.3d __, 2007 WL 1289428 (4th Cir. May 3, 2007). Employees brought claims against their employer and its parent company under § 1981 and Title VII claiming unlawful discrimination, as well as claims under Maryland law. The district court granted summary judgment for defendants, and appeal was taken. The appellate court held that: (1) the exemption for Alaska Native Corporations from suit under Title VII did not immunize employer from suit under the separate and independent cause of action for discrimination established by § 1981; (2) Caucasian employee had right to protest alleged discrimination visited upon Hispanic employees and to proceed with retaliation claim under § 1981 when he lost his job as a result; and (3) employees were bound by collective bargaining agreement requiring mandatory arbitration of discrimination claims. Affirmed in part, reversed in part, and remanded.

35. ***State ex rel. Workforce Safety & Ins. v. JFK Raingutters***, No. 20060196, 2007 WL 1647460 (N.D. June 7, 2007). Workforce Safety and Insurance ("WSI") commenced collection action seeking recovery of the unpaid workers' compensation premiums, penalties, interest, and costs from company and its sole owner. The district court granted WSI's motion for summary judgment, and company and its owner appealed. The Supreme Court held that state's workers' compensation laws applied to collection action brought by WSI against company which was not owned by Indian tribe, but, rather, was wholly owned by a member of the tribe. Affirmed.

36. ***Chao v. Matheson,*** No. C06-5361, 2007 WL 1830738 (W.D. Wash. June 25, 2007). This matter was before the court on the Plaintiff's Motion for Summary Judgment. At issue in the case was whether the Fair Labor Standards Act ("FLSA") applies to Defendants who

E. ENVIRONMENTAL REGULATIONS

37. ***Alexanderson v. Clark County***, 135 Wn. App. 541 (Oct. 17, 2006). Nearby landowners petitioned the Growth Management Board, challenging the county's decision to enter into a Memorandum of Understanding with the Cowlitz Indian Tribe regarding the processes by which the county would provide services to certain lands after they are taken into trust by the United States for gaming purposes. The Board dismissed the petition and the superior court affirmed. By extending utility system water supply service to the lands, and by using the lands for commercial gaming purposes, the MOU contemplated violation of the County's comprehensive plan and development regulations. Because the MOU is a de facto amendment of the comprehensive plan and not merely a development agreement, the appellate court reversed and held that the Board had jurisdiction to hear the petition.

38. ***Pit River Tribe v. U.S. Forest Serv.***, No. 04-15746, __ F.3d __, 2006 WL 3163952 (9th Cir. Nov. 6, 2006). The Pit River Tribe, the Native Coalition for Medicine Lake Highlands Defense, and the Mount Shasta Bioregional Ecology Center ("collectively Pit River") appealed from the district court's summary judgment on their claims against the Bureau of Land Management, the United States Forest Service, and the Department of the Interior (collectively agencies). Pit River alleged that the procedures followed by the agencies in extending certain leases in the Medicine Lake Highlands, and the subsequent approval of a geothermal plant to be built there, violated the National Environmental Policy Act, the National Historic Preservation Act, the National Forest Management Act, and the Administrative Procedure Act. Pit River also contended that the agencies violated their fiduciary obligations to Native American tribes. The appellate court concluded that the agencies did not take a "hard look" at the environmental consequences of the 1998 lease extensions and never adequately considered the no-action alternative. Reversed.

39. ***Gilbert v. Flandreau Santee Sioux Tribe***, No. 23733, 2006 WL 3445608 (S.D. Nov. 29, 2006). Claimant, who had been employed as education coordinator for Indian tribe, sought judicial review of denial, by Department of Labor, Unemployment Insurance Division, of her claim for unemployment insurance benefits. The circuit court affirmed and claimant appealed. The Supreme Court held that letter that claimant sent to Tribal Executive Committee did not involve matters of public concern, and thus, state's denial of claim for unemployment insurance benefits, based on finding of work-related misconduct, i.e., that claimant had been

40. ***Safe Air For Everyone v. U.S. Envtl. Protection Agency,*** No. 05-73383, 2006 WL 3697684 (9th Cir. Dec. 15, 2006). Not selected for publication in the Federal Reporter. Petitioner Safe Air for Everyone ("SAFE") sought review of a final rule promulgated by the Environmental Protection Agency ("EPA") that regulates air pollution on Idaho's Coeur d'Alene Indian Reservation. 40 C.F.R. §§ 49.9921a - 9930. SAFE challenged: (1) EPA's decision not to require those engaging in agricultural burning on the Coeur d'Alene Reservation to obtain a permit when it included such a permit regime in the regulations covering the Nez Perce and Umatilla Reservations (*see* 40 C.F.R. § 49.133); (2) EPA's failure to prohibit emissions on the Coeur d'Alene Reservation, including those from agricultural burning, that would "unreasonably interfere with the enjoyment of life and property." (*see* 40 C.F.R. § 49.135); and (3) the exclusion of agricultural burning from the air pollution sources on the Coeur d'Alene Reservation that must provide EPA with annual emissions reports as arbitrary and capricious (*see* 40 C.F.R. § 49.138(c)(11)). The appellate court found that the Administrative Procedures Act ("APA") does not impose a data collection duty on agencies, as SAFE argued, but only requires agencies to consider data related to their area of expertise when making decisions potentially informed by such data. Therefore, EPA's decision concerning how to collect data on agricultural burning-standing apart from a substantive decision on the permissibility of agricultural burning-did not violate the APA. Because the Clean Air Act lacks a requirement that EPA collect data from pollution sources on reservations, EPA's administrative considerations in designing the data collection process were neither arbitrary nor capricious. Petition for review denied.

41. ***County of Amador v. City of Plymouth***, No. G037570, 57 Cal. Rptr. 3d 704 (Cal. Ct. App. Apr. 17, 2007). County and other interested parties petitioned for writ of mandate seeking to invalidate, for failure to comply with California Environmental Quality Act ("CEQA"), city's municipal service agreement between city and Indian tribe who sought to construct casino complex. The superior court granted petition. City appealed, and when city abandoned its appeal, tribe intervened and appealed. The appellate court of Appeal held that: (1) subject of MSA was project subject to requirements of CEQA; (2) MSA constituted city's approval of its provision of municipal services for purpose of CEQA requirements; (3) MSA was not "government funding mechanism" exempt from CEQA requirements; and (4) portions of MSA requiring CEQA compliance were not severable from remainder of MSA. Affirmed.

42. ***Hesperia Citizens for Responsible Dev. v. City of Hesperia,*** No. D049614, 60 Cal. Rptr. 3d 124 (Cal. Ct. App. May 30, 2007). Citizens opposed to municipal services agreement ("MSA") between city's community redevelopment agency and Indian tribe, to provide municipal services to a gaming facility that tribe planned to build within agency's redevelopment project area, sued city and redevelopment agency, alleging that adoption of MSA was illegal. Defendants filed motion for summary judgment, and the superior court, granted the motion. Citizens appealed. The appellate court held that redevelopment agency's adoption of MSA did not violate Community Redevelopment Law. Affirmed.

43. ***Quechan Indian Tribe of Fort Yuma Indian Reservation v. U.S. Dep't of Interior,*** No. 07-0677, 2007 WL 1890267 (D. Ariz. June 29, 2007). The Quechan Tribe ("Plaintiff") filed a Complaint for Injunctive Relief against federal and non-federal defendants.

44. ***Miccosukee Tribe of Indians of Fla. v. United States,*** No. 02-22778, __ F. Supp. 2d __, 2007 WL 2175692 (S.D. Fla. July 30, 2007). Before the Court was Plaintiff Miccosukee Tribe's Motion to Find FSEIS Inadequate. Plaintiff Miccosukee Tribe and Intervenors challenged a series of water management decisions by the U.S. Army Corps of Engineers ("Corps") designed to avoid jeopardy to the endangered Cape Sable seaside sparrow ("Sparrow") in the Everglades National Park ("Everglades") while administering a number of Congressionally authorized programs aimed at balancing the water-related needs of South Florida. Plaintiff's Complaint alleged violations of the National Environmental Policy Act ("NEPA") and the Endangered Species Act ("ESA"), improper agency action under the Administrative Procedure Act ("APA"), violations of the rulemaking provisions of the APA, violations of the Fifth Amendment guarantee of due process, nuisance under federal common law, violation of the Indian Trust doctrine, as reflected in the Florida Indian Land Claims Settlement Act of 1982, violations of the Federal Advisory Committee Act, and improper delegation of agency authority, all stemming from allegedly improper action by the Corps in adopting and implementing the implementation and operations plan ("IOP"). Motions and Cross-motions for Summary Judgment were filed, resulting in the Court granting summary judgment to the Plaintiff on Count I of the Complaint, and to the Federal Defendants on the remaining counts and cross-claims. In its Order on summary judgment, the Court found that "the failure of the Corps to prepare a SEIS, with hydrologic modeling results and interpretation of the modeling stemming from the introduction of Alternative 7R, was arbitrary and capricious." The changes implemented by the adoption of Alternative 7R were significant, and the "Corps violated NEPA by failing to issue a SEIS after adopting Alternative 7R." The Corps was ordered to "issue a Supplemental Environmental Impact Statement" to repair the deficiencies. After the Corps filed a notice of availability of the Final Supplemental Environmental Impact Statement ("FSEIS"), the Court ordered the parties to file responses describing any issues remaining for resolution. In response, Plaintiff filed its motion, asking the Court to find the FSEIS inadequate and "enjoin the Corp from continuing to implement IOP and specifically enjoin the Corps from closing the S-12 gates when water levels in WCA-3A are in excess of 10.5 feet." The court denied plaintiff's Motion to Find FSEIS Inadequate stating that plaintiff failed to show the FSEIS is inadequate, a prerequisite for the injunction Plaintiff seeks.

45. ***United States v. Newmont USA Ltd.,*** No. CV-05-020-JLQ (U.S.D.C.E.D. Wash. Aug. 21, 2007). United States sued potentially responsible parties under CERCLA regarding former uranium mine on trust lands within the Spokane Indian Reservation. United States moved to dismiss Defendants' counterclaim. It was undisputed that the mine operated pursuant

F. FISHERIES, WATER, FERC, BOR

46. ***United States v. Washington***, No. CV 9213, Subproceeding No. 05-02, 2006 WL 3386868 (W.D. Wash. Nov. 21, 2006). This matter was before the court for consideration of a motion to dismiss filed by the Port Gamble and Jamestown S'Klallam Tribes ("S'Klallam"). The Skokomish Indian Tribe ("Skokomish"), joined by the Lower Elwha Klallam Tribe ("Lower Elwha"), opposed the motion. The court found that it does not have jurisdiction under Paragraph 25 of the Permanent Injunction to grant the relief requested since the rights and obligations of the parties were conclusively set forth in the Hood Canal Agreement, which does not empower the court to allocate fisheries resources among the tribes fishing in Hood Canal. The court granted the S'Klallam motion and dismissed the Subproceeding.

47. ***United States v. State of Oregon***, No. 03-35773, __ F.3d __, 2006 WL 3478341 (9th Cir. Dec. 4, 2006). United States brought action against states on behalf of Indian tribes to define treaty fishing rights. Confederation of tribes intervened as defendant, 43 F.3d 1284. The district court dismissed confederation's claim on behalf of constituent tribe. Confederation appealed. The appellate court held that constituent tribe's claim was not barred by res judicata. Reversed and remanded.

48. ***United States v. State of Washington***, No. CV 9213, 2007 WL 30869 (W.D. Wash. Jan. 4, 2007). This subproceeding was initiated as a Request for Determination filed by the Upper Skagit Indian Tribe ("Upper Skagit"), asking the court to determine that certain areas known as Saratoga Passage and Skagit Bay, on the eastern side of Whidbey Island, are not within the usual and accustomed fishing area ("U & A") of the Suquamish Indian Tribe ("Suquamish") as it was defined in *U.S. v. Washington*, 459 F. Supp. 1020 (1978). The court found that there were no factual issues in dispute, and that the requesting parties were entitled to judgment as a matter of law on their claim that the Suquamish U & A does not include Saratoga Passage or Skagit Bay. The court granted the motions for summary judgment by the Upper Skagit and Swinomish, and denied the Suquamish motion for summary judgment. As no issues remain to be determined, the trial date was stricken.

49. ***Confederated Salish & Kootenai Tribes v. Clinch***, Docket No. 04-042, 2007 WL 735698 (Mont. Mar. 12, 2007). Indian tribes brought action against Department of Natural Resources and Conservation ("DNRC") to enjoin it from processing application to change use of appropriative water rights on Indian reservation without quantifying tribes' reserved rights. The district court granted summary judgment in favor of tribes and issued permanent injunction.

50. ***Klamath Irrigation Dist. v. United States,*** Nos. 01-591 L, 01-5910L through 01-59125L, __ Fed. Cl. __, 2007 WL 853018 (Fed. Cl. Mar. 16, 2007). Irrigation districts and agricultural landowners which entered into contracts for the supply of irrigation water from the Klamath Basin reclamation project brought consolidated suits against the United States alleging that temporary reductions by the Bureau of Reclamation in the amount of project water available for irrigation constituted a breach of contract. Defendant moved for summary judgment. The Court of Federal Claims held that sovereign acts doctrine provided complete defense to claims that the Bureau breached contracts when it temporarily reduced the supply to protect endangered fish species in compliance with the Endangered Species Act ("ESA"), since the ESA was passed for the benefit of the public and not for the government-as-contractor. Motion granted.

51. ***Pacific Coast Fed. of Fishermen's Ass'ns v. U.S. Bureau of Reclamation,*** No. 06-16296, 2007 WL 901580 (9th Cir. Mar. 26, 2007). The Klamath Water Users Association ("KWUA") appealed the district court's order enjoining the U.S. Bureau of Reclamation ("BOR") from making irrigation diversions from the Klamath Reclamation Project ("Klamath Project" or "Project") under the 2002 Biological Opinion. The district court, acting pursuant to the 9th Circuit's previous decision in *Pacific Coast Fed. of Fishermen's Ass'ns v. U.S. Bureau of Reclamation*, 426 F.3d 1082 (9th Cir. 2005) (" PCFFA III "), ordered an injunction to remain in place until a new biological opinion consistent with the provisions of the Endangered Species Act ("ESA") has been produced. The appellate court affirmed the district court's order.

52. ***State of Oregon v. Watters,*** Nos. 03M5471, 03M5472; A127144 (Control); A127145, 2007 WL 987031 (Ore. Ct. App. Apr. 4, 2007). Native American defendants were convicted in the Circuit Court of gaming violations for taking of elk during closed season. Defendants appealed. The appellate court held that: (1) trial court had jurisdiction over prosecution; (2) claim that trial court lacked jurisdiction to adjudicate and interpret treaty rights in context of criminal proceedings had to be raised by demurrer or motion in arrest of judgment; (3) trial court had authority to determine whether treaty defined scope of hunting rights applied to prosecution against Native defendants for gaming violations; (4) allegation that Native American defendants killed elk during closed season on private property was sufficient to support charge for gaming violation; and (5) as matter of first impression, land on which Native Americans took elk was not "open and unclaimed," within meaning of treaty. Affirmed.

53. ***National Wildlife Fed. v. National Marine Fisheries Serv.,*** Nos. 06-35011, 06-35019, 481 F.3d 1224 (9th Cir. Apr. 9, 2007). Environmental advocacy organizations brought action alleging that National Marine Fisheries Service ("NMFS") violated requirements of the Endangered Species Act ("ESA") in its issuance of biological opinion ("BiOp") that proposed operations of Federal Columbia River Power System ("FCRPS") dams and related facilities would not jeopardize listed salmon and steelhead in the lower Columbia and Snake Rivers or adversely modify their critical habitat. After the district court, 2005 WL 1278878, held the BiOp invalid, and subsequently, 2005 WL 1398223, granted in part organizations' motion for a

54. ***State v. Cayenne,*** No. 34563-3-II, 2007 WL 1470595 (Wash. Ct. App. May 22, 2007). Defendant, a member of a Native American tribe, was convicted in the Superior Court of two counts of unlawful use of nets to take fish, and sentenced to, among other things, prohibition from possessing any gill nets. Defendant appealed. The appellate court held that any prohibition against defendant possessing gill nets on his reservation was void. Affirmed in part; crime-related prohibition vacated as purported to apply within Indian reservation.

55. ***Ottawa Tribe of Oklahoma v. Speck***, No. 3:05 CV 7272, 2006 WL 2164740 (N.D. Ohio July 31, 2006). This matter was before the court on defendant Speck's Motion to Dismiss. Speck argued the Tribe did not establish a justiciable dispute regarding the Tribe's commercial hunting and fishing rights because the Tribe was not present in Ohio and, without the Tribe's presence, the claim for fishing and hunting rights is not ripe. He further argued that the Tribe failed to detail how it would use these rights and, therefore, it has no real or immediate threat of injury. In response, the Tribe argued that the State's press release stating that the Tribe relinquished its hunting and fishing privileges in Ohio demonstrates a concrete, particularized, and imminent injury. It argued the dispute is concrete: namely, whether the alleged treaties provide the Tribe with hunting and fishing rights in Ohio. The court denied the motion to dismiss.

56. ***Maine v. Johnson,*** Nos. 04-1363, 04-1375, 2007 WL 2258265 (1st Cir. Aug. 8, 2007). Petitions were brought for review of decision of the Environmental Protection Agency ("EPA") which gave State of Maine permitting authority, under the Clean Water Act ("CWA") and the Maine "Settlement Acts," with regard to discharge of pollutants into territorial waters of certain Indian tribes, but exempted two tribal-owned facilities from the State's permitting program. On consolidation of petitions, the appellate court held that: (1) EPA did not err in giving State permitting authority with regard to 19 facilities which discharged pollutants into territorial waters of two Indian tribes; but (2) EPA erred in exempting from that authority two Indian tribe-owned facilities; and (3) court lacked jurisdiction to review issue of whether EPA, after granting State permitting authority, retained authority to review State-issued permits in light of a general trust relationship between the federal government and two Indian tribes. Affirmed in part and vacated and remanded in part.

57. ***United States v. Washington***, No. CV 9213 RSM Subpro. No. 01-01 (W.D. Wash. Aug. 22, 2007). A Request for Determination was brought by plaintiff Indian Tribes in 2001 to compel the State of Washington to repair or replace culverts under state-owned roads that are impeding salmon migration to or from spawning grounds. The Tribes requested declaratory judgment that the State has a treaty-based duty to preserve fish runs so the Tribes can earn a moderate living. On cross-motions for summary judgment, the court concluded that

G. GAMING

58. ***Miami Tribe of Oklahoma v. United States***, No. 05-3085, 2006 WL 2392194 (10th Cir. Aug. 21, 2006). Not selected for publication in the Federal Reporter. This dispute centered on whether the Miami Tribe ("Tribe") can, under the Indian Gaming Regulatory Act ("IGRA"), conduct gaming on a tract of land known as the Maria Christiana Reserve No. 35 ("the Reserve") in Kansas. The Tribe argued that a 2002 Department of the Interior ("DOI") Opinion Letter violated the Joint Stipulation entered into by the Tribe, the NIGC, and the DOI in earlier litigation. The Joint Stipulation would allow the Tribe to conduct gambling operations on the Reserve. However, after the Joint Stipulation was made, the state of Kansas – not a party to the stipulation – sought and received a preliminary injunction that prevented the Tribe from commencing the gaming operations. The Kansas litigation resulted in a remand to the NIGC for further consideration of the Tribe's gaming application, and the NIGC has yet to issue a final decision. It was in response to the appellate court's decision in the Kansas case that the DOI issued its Opinion Letter. The court found that the Tribe's action prematurely challenged the DOI Opinion Letter in its attempt to enforce the Joint Stipulation. The appellate court found that it lacks jurisdiction to hear the challenge of intermediate agency action and under the Tucker Act, it also lacks the authority to enforce the Joint Stipulation and affirmed the district court's dismissal of the Tribe's claims for lack of subject matter jurisdiction.

59. ***Wisconsin v. Ho-Chunk Nation,*** No. 06-1053, 06-1837, __ F.3d __, 2006 WL 2588936 (7th Cir. Sept. 11, 2006). State of Wisconsin brought action to compel arbitration of dispute concerning gaming compact negotiated with Indian tribe under Indian Gaming Regulatory Act ("IGRA") and for appointment of an arbitrator. The district court exercised jurisdiction and appointed arbitrator, 402 F.Supp.2d 1008, and denied State's motion for substitute arbitrator. Tribe appealed from former order, and state appealed from latter order. After State sought to voluntarily dismiss appeal, tribe moved for sanctions. The appellate court held that: (1) Federal Arbitration Act ("FAA") did not provide independent basis for jurisdiction; (2) IGRA did not provide basis for jurisdiction; and (3) sanctions for filing frivolous appeal were not appropriate in case in which State gave notice and filed motion for voluntary dismissal before tribe filed opening brief. Vacated and remanded; appeal dismissed in part and motion for sanctions denied.

60. ***Santee Sioux Nation v. Norton,*** No. 8:05CV147, 2006 WL 2792734 (D. Neb. Sept. 29, 2006). Plaintiff Santee Sioux ("Tribe") filed a complaint requesting declaratory and injunctive relief against the Department of Interior's ("DOI") decision disapproving the Tribe's application for a Class III gaming application under 25 C.F.R. Part 291, 28 U.S.C. §§ 2201 and 2202. The Tribe contended that DOI violated the Indian Gaming Regulatory Act ("IGRA") and

61. ***State of Idaho v. Shoshone-Bannock Tribes***, No. 04-35636, __ F.3d __, 2006 WL 2873636 (9th Cir. Oct. 11, 2006). Federally recognized Indian tribe brought declaratory judgment action against state, seeking determination as to types of games tribe could offer pursuant to tribal-state gaming compact. After consolidating action with similar action brought by state, the district court granted summary judgment for tribe. State appealed. The appellate court held that: (1) amendment of compact was required for tribe to be able to operate video gaming machines as a result of permitted operation of such games by other tribes in state; (2) amendment of compact to permit tribe to operate video gaming machines was mandatory, and did not reopen compact to renegotiation; and (3) state statute imposing limitations on numbers of tribal video gaming machines and requiring tribes amending their gaming compacts to permit use of such machines to contribute to local educational programs and schools did not apply to tribe. Affirmed.

62. ***Colorado River Indian Tribes v. National Indian Gaming Comm'n***, No. 05-5402, __ F.3d __, 2006 WL 2987912 (D.D.C. Oct. 20, 2006). Indian tribe sued National Indian Gaming Commission ("NIGC"), claiming that NIGC exceeded its authority by promulgating regulations establishing mandatory operating procedures for Class III gaming in tribal casinos. Tribe moved for summary judgment. The district court, 383 F. Supp. 2d 123, granted tribe's motion for summary judgment and NIGC appealed. The appellate court held that Indian Gaming Regulatory Act did not give NIGC authority to promulgate regulations establishing mandatory operating procedures for class III gaming. Affirmed.

63. ***Sault Ste. Marie Tribe of Chippewa Indians v. Granholm,*** Nos. 05-2146, 05-2603, __ F.3d __, 2007 WL 220159 (6th Cir. Jan. 30, 2007). State moved to compel compliance with consent judgment which set forth guidelines for operation of Indian casinos and method of calculating payments to local communities. The district court held that promotional tokens had value and were monetary "wagers" under consent judgment calculations for determining payments and granted state's motion. Indian tribe appealed. The appellate court held that: (1) case was not mooted when Indian casino ceased using promotional tokens; (2) court committed reversible error in failing to consider Indian casino's extrinsic evidence to determine whether latent ambiguity existed with respect to meaning of "wager" in consent judgment; and (3) extrinsic evidence presenting gaming industry standards for promotional play and industry accounting practices was relevant to appropriate value to assign promotional tokens. Reversed and remanded

64. ***Santana v. Cherokee Casino,*** No. 06-5210, 2007 WL 356058 (10th Cir. Feb. 6, 2007). Appellant Eddie Santana filed a complaint in federal district court asserting that Defendants use billboards and other forms of advertising to entice individuals to gamble at their casinos. Santana alleged he is currently being treated for a gambling addiction. He asserted Defendants' advertising unfairly targets individuals with gambling addictions, resulting in Defendants' unjust enrichment. Santana sought damages in the amount of $9,000, a sum he alleged he has lost gambling since 2002. Santana based his claims on the Indian Gaming Regulatory Act ("IGRA") and asserted the federal court had subject matter jurisdiction under 28 U.S.C. § 1331. The district court dismissed the suit for lack of jurisdiction, noting Santana was attempting to pursue state law tort claims against Defendants through the IGRA and concluding the IGRA does not contain a private right of action in favor of an individual. The court further concluded Santana could not rely on diversity jurisdiction since all parties are citizens of Oklahoma for purposes of 28 U.S.C. § 1332. The appellate court concluded the district court did not err when it dismissed Santana's complaint for lack of subject matter jurisdiction and affirmed the district court's dismissal of Santana's action.

65. ***Jane Doe v. Santa Clara Pueblo, Santa Clara Dev. Corp.,*** No. 29,350 (N.M. Feb. 23, 2007). In *Gallegos v. Pueblo of Tesuque*, 2002-NMSC-012, ¶ 10 n.3, 132 N.M. 207, 46 P.3d 668, the Court left unanswered the question whether gaming compacts between the State of New Mexico and various New Mexico Pueblos that created concurrent jurisdiction in state courts over personal injury actions against tribal-owned casinos were valid and enforceable in light of the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. § 2701 (2000). The court answered that question in the affirmative, holding that state courts have jurisdiction over personal injury actions filed against Pueblos arising from negligent acts alleged against casinos owned and operated by the Pueblos and occurring on Pueblo lands. In so doing, it affirmed the majority opinion of the Court of Appeals below. *See Doe v. Santa Clara Pueblo*, 2005-NMCA-110, 138 N.M. 198, 118 P.3d 203.

66. ***Michigan Gambling Opposition v. Norton,*** No. 05-01181, 2007 WL 591556 (D.D.C. Feb. 23, 2007). Dispute arose from defendants' decision to place two parcels of land into trust for intervenor, Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians. Intervenor wishes to convert the property to a casino Plaintiff, a Michigan non-profit corporation that opposes the proliferation of gambling venues, filed a complaint alleging that defendants violated IGRA, NEPA, and the Constitution's non-delegation doctrine. The matter was before the Court on the United States and Intervenor's dispositive motions. Defendants argued, among other things, that there are no genuine issues of material fact in dispute and for nearly identical reasons, intervenor argued for dismissal of the Complaint. Plaintiff opposed the dispositive motions on the grounds that: (1) defendants' classification of the proposed casino site as an "initial reservation" is inconsistent with the requirements imposed by the Indian Gaming Regulatory Act; (2) defendants violated the National Environmental Policy Act by failing to issue an environmental impact statement, and instead issuing a finding of no significant impact; (3) defendants cannot legally authorize Class III gaming because they have not yet secured a tribal-state gaming compact; and (4) defendants have no constitutionally valid authority on which to acquire land in trust for [intervenor]. The Court concluded that plaintiff had raised no genuine issues of material fact and defendants and intervenor were entitled to judgment as a matter of law.

67. ***Ledoux v. Grand Casino-Coushatta,*** No. 06-1500, 954 So. 2d 902 (La. Ct. App. Apr. 4, 2007). Two casino patrons filed breach of contract claims against Indian tribe, casino, and casino corporation that alleged casino failed to pay out jackpots allegedly won by patrons on the same slot machine on two different dates. The district court granted patrons summary judgment and awarded one patron $65,581 and awarded second patron $32,790.50. Tribe appealed. The appellate court held that: (1) tribe expressly waived its sovereign immunity as to patrons' claims; (2) two-year prescriptive period provided by tribal law for tort claims did not bar patrons' lawsuit against casino and tribe; and (3) tribe's allegation that slot machine malfunctioned on two separate occasions when it awarded jackpots in excess of its programming was insufficient to establish contract between tribe and casino patrons was a nullity. Affirmed.

68. ***Citizens Exposing Truth about Casinos v. Kempthorne,*** No. 06-5354, __ F.3d __, 2007 WL 1892080 (D.D.C. July 3, 2007). Following federal recognition of the Nottawaseppi Huron Band of Potawatomi Indians ("the Band") in 1995, the Assistant Secretary of the Bureau of Indian Affairs of the Department of Interior took 78.26 acres of farmland in Calhoun County, Michigan into trust for use by the Band to construct and operate a Class III gambling casino under the Indian Gaming Regulatory Act ("IGRA"). A non-profit Michigan membership organization, Citizens Exposing Truth About Casinos ("Citizens"), sued challenging the Secretary's determination that the proposed site was within the "initial reservation" exception to IGRA's general prohibition on gaming on trust land acquired after October 17, 1988, and thus exempting it from the community protection provision before opening a casino at the site. Citizens appealed the district court's grant of summary judgment to the Secretary, contending that in deferring to the Secretary's interpretation of the exception the district court ignored both the letter and intent of Congress. The appellate court affirmed.

69. ***Apache Tribe of OK v. United States,*** No. CIV-04-1184-R, 2007 WL 2071874 (W.D. Okla. July 18, 2007). This action arose under the federal Indian Gaming Regulatory Act (IGRA), 25 U.S.C. §§ 2701-2721. The Assistant Secretary of the Department of the Interior approved a Class III off-track wagering gaming compact submitted by the Chickasaw Tribe of Oklahoma. The plaintiff, the Apache Tribe of Oklahoma, challenged the approval of the compact and the determination made during that process that the land described in the Compact is "located within that area of land constituting the former reservation land of the Chickasaw Nation in Oklahoma." Plaintiff argued that the administrative record does not support the conclusion that the Compact does not violate the Indian Gaming Regulatory Act ("IGRA"). Plaintiff sought declaratory relief, asking the court to declare that the Defendants' determination that certain land held in trust for the Chickasaw tribe is "former reservation land" of the Chickasaw nation for purposes of 25 U.S.C. § 2719 "was arbitrary, capricious, an abuse of discretion, not in accordance with law, unwarranted by the facts, and in excess of statutory authority." Defendants contended they fulfilled their obligations under IGRA in approving the Compact. Additionally, Plaintiff contended Defendants failed to consider whether the Chickasaw tribe ever exercised governmental power over the tract of land in question, which Plaintiff contends is part and parcel of a § 2719 determination. The court concluded that because it is not apparent from the administrative record that the proper determinations were made with regard to the Chickasaw off-track wagering compact, that this matter should be remanded to the Secretary for further proceedings consistent with the opinion. The Secretary and the NIGC are instructed to determine whether the land that is the subject to the Compact is "Indian land" under IGRA and should consider the applicability of § 2719 to the parcel and Defendants should provide an explanation for the determination in both regards and should ensure that the

70. ***State of Texas v. United States,*** No. 05-50754, 2007 WL 2340781 (5th Cir. Aug. 17, 2007). This litigation involved a challenge to procedures adopted by the Secretary of the Interior Department ("Secretary") to circumvent the consequences of the Supreme Court's Eleventh Amendment decision in *Seminole Tribe of Florida v. Florida,* 517 U.S. 44, 116 S. Ct. 1114, (1996). An initial question was whether Texas's challenge to the existence of the Secretarial Procedures is ripe, before the Secretary has made a substantive determination on a tribe's Class III gaming license. The appellate court held that the case was ripe, the State has standing, and the Secretary lacked authority to promulgate the regulations. The district court's judgment was reversed and remanded.

H. LAND CLAIMS

71. ***Oneida Indian Nation of New York v. New York,*** No. 574-CV-187, 2007 WL 1500489 (N.D.N.Y. May 21, 2007). This action was brought by three Oneida tribal groups – the Oneida Indian Nation of New York ("New York Oneidas"), the Oneida Tribe of Indians of Wisconsin, and the Oneida of the Thames (collectively, the "Oneidas" or "Plaintiffs"). Plaintiffs seek redress for allegedly unlawful transfers of approximately 250,000 acres of land in central New York. The United States intervened as a plaintiff in this action in March, 1998. Presently before the Court is a Motion for summary judgment submitted on behalf of defendants, the State of New York (the "State") and the Counties of Oneida and Madison (the "Counties") (collectively, "Defendants"). Plaintiffs are the heirs and political successors to the aboriginal Oneida Indian Nation that occupied the claimed land from time immemorial. Plaintiffs are also the heirs to a long and proud history; a history that is filled with a number of betrayals. As part of that history, Plaintiffs inherited the legal claim to right the historic wrongs born of actions that can only be seen as grave injustices. The courts have held themselves open to Plaintiffs' land claims for generations, however, recent legal developments raise the possibility that this Court might be compelled to close its doors now. The Court does not believe that the higher courts intended to or have barred Plaintiffs from receiving any relief; to do so would deny the Oneidas the right to seek redress for long-suffered wrongs. For the reasons discussed below, the Court grants Defendants' Motion for summary judgment in part and denies the Motion in part.

I. RELIGIOUS FREEDOM

72. ***Navajo Nation v. U.S. Forest Serv.***, Nos. 06-15371, 06-15436, 06-15455, 2007 WL 737900 (9th Cir. Mar. 12. 2007). The appellate court reversed the decision of the district court in part, holding that the Forest Service's approval of the Snowbowl's use of recycled sewage effluent to make artificial snow on the San Francisco Peaks violated RFRA, and that in one respect the Final Environmental Impact Statement prepared in this case does not comply with NEPA. The court affirmed the grant of summary judgment to Appellees on four of Appellants' five NEPA claims and their NHPA claim.

73. ***Coronel v. Paul,*** No. 05-16964, 2007 WL 831578 (9th Cir. Mar. 19, 2007). Not selected for publication in the Federal Reporter. Coronel, a Hawaii state prisoner housed at The Florence Correctional Center ("FCC"), a private prison in Arizona, appealed pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging that defendants violated the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. § 2000cc-1(a), and his First Amendment right to practice his Dianic Pagan religion and to worship with native Hawaiians or Pascua Yaqui Native Americans. The appellate court found that the district court erred in determining that the prison chaplain and prison Warden did not personally participate in the policy that prohibited Coronel from attending Pascua Yaqui ceremonies. It also found that the district court erred in concluding that Coronel presented no evidence that Corrections Corporation of America ("CCA") had a policy or custom that was the moving force behind the alleged violations. The appellate court reversed the district court's summary judgment for defendants, and remanded for further proceedings on the triable issues of fact that remain.

J. SOVEREIGN IMMUNITY and FEDERAL JURISDICTION

74. ***House of Blues Concerts, Inc. v. Redfearn***, No. D046359, 2006 WL 1321125 (Cal. Ct. App. May 15, 2006). House of Blues Concerts, Inc. appealed the trial court's order granting a motion to quash service of summons based on tribal sovereign immunity in favor of an officer of a tribal business entity owned by the Viejas Band of Kumeyaay Indians (Viejas). The appellate court concluded that the trial court correctly concluded that the officer is protected by Viejas's tribal sovereign immunity as an officer of a tribal business enterprise. The appellate court affirmed.

75. ***California Valley Miwok Tribe v. United States***, No. 04-16676, 2006 WL 2373434 (9th Cir. Aug. 17, 2006). Not selected for publication in the Federal Reporter. (*from the opinion*) "The California Valley Miwok Tribe appeals the dismissal of its claims against the United States for breach of trust and violation of the Rancheria Act of 1958, as amended, arising out of the improper conveyance of tribal trust land to an individual Tribe member. We affirm. We first reject the government's argument for summary affirmance. While the district court found no waiver of sovereign immunity on four theories, including the Administrative Procedure Act (APA), 5 U.S.C. § 706(1), the court then proceeded to the merits of the statute of limitations issue. In doing so, it assumed correctly that sovereign immunity was waived under the APA, 5 U.S.C. § 702. The Tribe did not need to appeal this assumption because it was in its favor. Next, although the Tribe correctly argues that the limitations period in 28 U.S.C. § 2401(a) is not strictly jurisdictional, *see Cedars-Sinai Med. Ctr. v. Shalala*, 125 F.3d 765, 770 (9th Cir. 1997); *Supermail Cargo, Inc. v. United States*, 68 F.3d 1204, 1206 n.2 (9th Cir. 1995), we conclude that the district court nonetheless correctly analyzed the limitations issue and held based on the undisputed facts that the 1993 ALJ decision effectively put the Tribe on notice of its injury, adopting the reasoning of *Hopland Band of Pomo Indians v. United States*, 855 F.2d 1573, 1577 (Fed. Cir. 1988). Under *Hopland' s* "knew or should have known" standard, Yakima Dixie was in a position to obtain knowledge of the Tribe's injury caused by the ALJ's 1993 decision, and the Tribe's claim thus accrued at that time. Finally, this case presents no exception to the general rule that we will not consider arguments made for the first time on appeal. *See United States v.*

76. ***Ellenbast v. Watkins***, No. 2004-11271, 821 N.Y.S. 2d 275, (N.Y. Sept. 26, 2006). Action was brought against Indian tribe to recover for personal injuries. The Supreme Court granted tribe's motion to dismiss the complaint, and plaintiff appealed. The Supreme Court, Appellate Division, held that tribe had tribal status which entitled it to assert sovereign immunity from personal injury suit. Affirmed.

77. ***Allen v. Gold Country Casino***, No. 05-15332, 2006 WL 2788494 (9th Cir. Sept. 29, 2006). Former employee of casino, owned and operated by Indian tribe, brought action against employer. The district court dismissed the claims and plaintiff appealed. The appellate court held that: (1) casino acted as arm of tribe, and thus was entitled to tribal sovereign immunity, and (2) casino did not waive tribal sovereign immunity. Affirmed in part, reversed in part, and remanded.

78. ***In re Hutchinson,*** No. 05 43445 13, __ B.R. __, 2006 WL 2848654 (Bkrtcy. D. Kan., Oct. 5, 2006). This matter was before the court on the Trustee's Motion for Turnover and other Trustee motions. Central to each of the motions and objections was Debtors' proposed treatment and use of per capita distributions that they, as enrolled members of the Prairie Band of Potawatomi Indians of Kansas Tribe, have received, or are entitled to receive, during the pendency of the Chapter 13 proceeding. The Court had four issues to decide: (1) whether the per capita distributions are property of the estate, (2) if the distributions are property of the estate, whether they are exempt under 11 U.S.C. § 522(d)(10)(A) or 25 U.S.C. § 410, (3) if they are a non-exempt asset of the estate, whether Debtors' plan meets the "best interest of the creditors" test, and (4) whether the motion for turnover should be granted while the case proceeds in Chapter 13. The Court sustained the Trustee's objection to Debtors' attempt to exempt their per capita distributions, and found the distributions are not exempt under § 522(d)(10)(A) or 25 U.S.C. § 410.

79. ***Burgess v. Watters***, No. 05-1663, 2006 WL 3093635 (7th Cir. Nov. 2, 2006). Following affirmance of his involuntary commitment to state mental health facility as sexually violent person, petitioner sought writ of habeas corpus. The district court, 2005 WL 372259, denied petition, and petitioner appealed. The appellate court held that Wisconsin Supreme Court did not unreasonably apply clearly established federal law in determining that State had power to involuntarily commit enrolled member of Indian tribe as sexually violent person under civil jurisdiction conferred by Congress on States. Affirmed.

80. ***Laborde v. Pecot***, No. 2005-285, 942 So. 2d 699 (La. Ct. App. Nov. 2, 2006). Former employees and customers of Indian tribe brought personal injury actions against tribe's insurer, and general contractor and subcontractors involved in construction of hotel for tribe, alleging they had been exposed to toxic mold. The district court denied defendants' exceptions of no right of action, lack of indispensable party and related exceptions. Defendants filed writs of review. The appellate court reversed, and plaintiffs applied for writs. The Supreme Court, 925 So. 2d 523, denied in part and granted in part the application. On remand, the appellate court held that Indian tribe was not a necessary party, and action would not be dismissed for nonjoinder. Writ denied, and remanded.

81. ***Pais v. Sinclair***, No. EP-06-CV-137-PRM, 2006 WL 3230035 (W.D. Tex. Nov. 2, 2006). Plaintiff Pais filed a § 1983 Complaint claiming that Tigua Nation Governor Art Sinclair employed him as a laborer and cook and that his supervisor took him to work at the Chile Cote Ranch located on the Tigua Reservation and that while at the ranch, supervisor assaulted him and then refused to pay him. Pais sought monetary damages for purported constitutional violations and torts committed against him. The Magistrate's Report addressed issues of tribal immunity, failure to state a claim, the Federal Tort Claims Act, the Indian Civil Rights Act, federal jurisdiction, and tribal exhaustion requirement and recommended that the complaint be dismissed. The court adopted the Magistrate's Report and dismissed the complaint.

82. ***Chavez v. Desert Eagle Distrib. Co. of New Mexico, LLC***, No. 26,261, 2006 WL 4013823 (N.M. Ct. App. Dec. 1, 2006). Motorists, who were injured in automobile accident involving drunk driver who was served alcohol at Indian casino, brought negligence action against casino and alcohol distributors. The district court dismissed claims against distributors. Motorists appealed. The appellate court held that: (1) provision of state Liquor Control Act that governed hours and days of business did not apply to casino; (2) Act's provision stating that licensees shall be fully liable and accountable for use of license did create duty of care; (3) motorists' injuries were not foreseeable to distributors; and (4) public policy did not support imposition of duty. Affirmed.

83. ***Wright v. Colville Tribal Enter. Corp.***, 2006 Wn. 2d (77558-3) (Dec. 7, 2006). Employee of tribal governmental corporation in Oak Harbor sued CTEC and his supervisor alleging racial harassment and tort. Tribal code distinguishes business from governmental corporations, which are instrumentalities of the tribe. The superior court dismissed under CR 82.5(a) but the Court of Appeals rejected defendants' claimed immunity. Tribal sovereign immunity protects a tribal corporation and agents in their official, but not individual, capacities, whether on or off the reservation. Immunity has not been waived here. Reversed.

84. ***County of Madera v. Picayune Rancheria of the Chukchansi Indians***, No. CIV F 06-1698, 2006 WL 3734181 (D. Cal. Dec. 18, 2006). This case involves a dispute between the County of Madera ("the County") and the Picayune Rancheria of the Chukchansi Indians ("the Tribe"). Pending before the Court was the County's motion to remand and motion for temporary restraining order. The Tribe operates a casino and is attempting to construct a hotel and spa on the casino land. The Tribe began construction, but the County issued stop work notices because the Tribe did not obtain certain construction permits required by the County. The County filed a nuisance abatement suit against the Tribe in state court and the Tribe removed the suit to district court. The district court granted the County's motion to remand and denied the Tribe's motion to transfer and the County's motion for temporary restraining order as moot.

85. ***Vann v. Kempthorne***, No. 03-01711, __ F. Supp. 2d __, 2006 WL 3720376 (D.D.C. Dec. 19, 2006). Descendants of so-called Freedmen, former slaves of Cherokees or free blacks who intermarried with Cherokees, brought suit against Department of Interior and its secretary, seeking declaratory judgment that Cherokee Nation elections were invalid due to their exclusion and injunction barring the secretary from recognizing election results. Cherokee Nation was granted limited intervention for purpose of challenging jurisdiction. Cherokee Nation moved to dismiss, and Freedmen moved for leave to file amended complaint adding Nation and certain officials. The district court held that: (1) Cherokee Nation was necessary party to be joined if feasible; (2) Cherokee Nation's sovereign immunity from suit in federal

86. ***Agua Caliente Band of Cahuilla Indians v. Superior Court***, No. S123832, 2006 WL 3741905 (Cal. Dec. 21, 2006). Fair Political Practices Commission ("FPPC") sued Indian tribe to force it to comply with reporting requirements for campaign contributions contained in the Political Reform Act ("PRA"). The tribe filed a motion to quash service of summons for lack of personal jurisdiction on the ground that it was immune from suit under the doctrine of tribal sovereign immunity. The superior court denied the tribe's motion. The tribe filed a petition for writ of mandate, and the appellate court denied the petition. The California Supreme Court granted the tribe's petition for review and transferred the matter to the appellate court. The appellate court denied the petition, and the Supreme Court again granted the tribe's petition for review, superseding the opinion of the appellate court. The Supreme Court held that: (1) Tenth Amendment and the republican government guarantee clause provided FPPC authority to bring suit against the tribe to enforce PRA, and thus tribal sovereign immunity did not apply, and (2) alternatives to enforcing PRA were inadequate to protect the state's rights. Judgment of appellate court affirmed and matter remanded.

87. ***Hinsley v. Standing Rock Child Protective Serv.,*** No. 1:05-cv118, __ F. Supp. 2d __, 2007 WL 140973 (D.N.D. Jan. 22, 2007). Before the court was defendants' Motion for Summary Judgment. Plaintiff, Jessica Hinsley ("Hinsley") contended that she was injured as a result of negligent acts or omissions on the part of the Standing Rock Sioux Tribe's Child Protective Services program. Hinsley alleged that Child Protective Services placed her younger brother (T.C.) in her home without notifying her that T.C. was a child molester and, while at Hinsley's home, T.C. molested Hinsley's daughter. The government argued that no representations were ever made to Hinsley that a formal placement of T.C. was being made into her home. Hinsley acknowledged that she voluntarily accepted T.C., that she did not sign a placement agreement, and that she did not receive any payments or followup visits or contact with Child Protective Services. The government contended that it should be granted summary judgment for two reasons: (1) the discretionary function exception to liability under the Federal Tort Claims Act barred Hinsley's claims; and (2) the government did not have a duty to warn Hinsley about T.C's dangerous propensities. The court found that the case falls within the statutory exception to the Federal Tort Claims Act and the court lacked subject matter jurisdiction. It found that there are no specific federal or state statutes, rules, regulations, or policies that required Child Protective Services to warn others of the dangerous propensities of an individual who was gratuitously or formally placed in a home after being discharged from the agency and that each of the decisions made by Child Protective Services were protected by the discretionary function exception. The court granted defendants' Motion for Summary Judgment and dismissed Hinsley's complaint for lack of subject matter jurisdiction.

88. ***Dobbs v. Anthem Blue Cross & Blue Shield,*** No. 05-1319, __ F.3d __, 2007 WL 241282 (10th Cir. Jan. 30, 2007). Plaintiffs Dobbs, beneficiaries of group health insurance

89. ***LaSalle Bank v. Reeves,*** No. 0268, 919 A.2d 738 (Md. Ct. Spec. App. Mar. 2, 2007). Lender, who bought property in which it had a secured interest at foreclosure sale, filed declaratory action to reform description of property in deed of trust to encompass three-acre entire parcel as intended by parties. Borrower moved to dismiss. The circuit court granted motion to dismiss on statute of limitations grounds. Lender appealed. The Court of Special Appeals held that: (1) Indian tribe was necessary party to action; (2) declaratory judgment action was an equitable action subject to laches defense; and (3) laches defense did not apply for lack of prejudice to borrower. Reversed and remanded.

90. ***Pine Bar Ranch v. Luther***, No. 06-108, 2007 WL 625030 (Wyo. Mar. 2, 2007). Property owners filed petition for review regarding decision of board of county commissioners that denied application to establish private road. The district court reversed board's decision. Objecting party appealed. The Supreme Court held that: (1) for purposes of private-road statute, road that property owners used to access their allegedly landlocked property was not "public road"; (2) Indian tribes' offer to grant limited right-of-way was insufficient to establish access to public road; and (3) property owners were not required to pursue limited right-of-way from Indian tribes before seeking to establish private road. Affirmed.

91. ***United Keetoowah Band of Cherokee Indians of Oklahoma v. United States,*** Nos. 06-5003, 06-5021, __ F.3d __, 2007 WL 803499 (Fed. Cir. Mar. 19, 2007). The United Keetoowah Band of Cherokee Indians of Oklahoma ("UKB") appealed and the United States cross-appealed the Court of Federal Claims' dismissal of the cause of action brought by the UKB against the United States for damages arising from a settlement related to the Arkansas River basin. The trial court dismissed the cause of action upon finding under Rule 19 of the United States Court of Federal Claims that the Cherokee Nation of Oklahoma ("CNO") is both a necessary and an indispensable party that cannot be joined in the action because of the CNO's governmental sovereign immunity. *United Keetoowah Band of Cherokee Indians of Oklahoma v. United States*, 67 Fed. Cl. 695 (Fed. Cl. 2005). The appellate court found that the trial court erred in finding the CNO a "necessary" party under RCFC 19(a), and reversed.

92. ***San Pasqual Band of Mission Indians v. California,*** No. 06cv0988, 2007 WL 935578 (S.D. Cal. Mar. 20, 2007). Plaintiff the San Pasqual Band of Mission Indians ("San Pasqual") sought declaratory relief in an action against the State of California, the California Gaming Control Commission ("Commission"), and Governor Arnold Schwarzenegger ("Defendants") related to its 1999 Tribal-State Compact, under the Indian Gaming Regulatory Act of 1988 ("IGRA"). The matter was before the court on the State's Motion To Dismiss pursuant to Fed. R. Civ. P. 12(b)(7), (19). San Pasqual alleged the State's calculation of the total aggregate number of licenses under the Compact formula is too low. The tribe sought a judicial determination of the question: What is the correct number of Class III Gaming Device licenses authorized in the aggregate by the State Aggregate Limit formula contained in San Pasqual's

93. ***State v. Jones,*** Docket No. A05-365, 2007 WL 851645 (Minn. Mar. 22, 2007). Enrolled Indian tribal member previously convicted of kidnapping, who had been charged under predatory-offender registration statute with felonies of failing to notify Bureau of Criminal Apprehension ("BCA") of his change of address and failing to complete, sign and return to the BCA requisite address verification forms, moved to dismiss charges on ground that state courts lacked subject matter jurisdiction to enforce citied provisions of statute against him. The district court granted motion. State sought review. The appellate court, 700 N.W. 2d 556, affirmed. State appealed. The Supreme Court held that violation of predatory-offender registration statute was a criminal/prohibitory offense, and thus, state had subject matter jurisdiction to prosecute tribal member. Reversed.

94. ***In re Sonoma County Fire Chief's Application for an Inspection Warrant***, No. 05-16011, 2007 WL 1073859 (9th Cir. Apr. 5, 2007). Not selected for publication in the Federal Reporter. The district court ruled against the Sonoma County Fire Chief ("County") on the County's lawsuit for an inspection warrant, dismissing in part and granting summary judgment against the County in part. The County appealed. The appellate court found that the district court properly had jurisdiction over this case, as the County's complaint raised a federal question by arguing that Public Law 280 (18 U.S.C. § 1162; 28 U.S.C. § 1360) and federal case law allowed the County to enforce fire codes on the casino. Thus, it was proper for the district court to refuse to remand after the Dry Creek Rancheria Band of Pomo Indians (Tribe) had removed the case from state court. The district court also correctly held that the County could not enforce fire codes on reservation lands. The Compact imposes safety obligations upon the Tribe and provides means of enforcement and of dispute resolution, thus giving the state an alternative method of vindicating its interests in safety, should the state come to believe that the Tribe is failing on this front. The Compact does not establish a role for the County, and the state has not supported the County's position. Affirmed.

95. ***State v. Reber,*** Nos. 20060299, 2006030, 2007 WL 1189637 (Utah, April 24, 2007). In separate cases, defendants were convicted in the district court of aiding or assisting in wanton destruction of protected wildlife and attempted wanton destruction of wildlife, and juvenile who was assisted by one of defendants was adjudicated delinquent on same basis. All appealed. On consolidated appeal, appellate court, 128 P.3d 1211, reversed based on determination that State lacked jurisdiction. On certiorari review, the Supreme Court held that: (1) tribe was not victim of deer shooting on land that was within Indian country but not owned by tribe or any member of tribe, and (2) defendants and juvenile were not Indians under federal

96. ***Van Kruiningen v. Plan B, LLC,*** No. 3:05cv1528, __ F. Supp. 2d __, 2007 WL 1266134 (D. Conn. May 1, 2007). Employees terminated by owner of casino club sued owner for, inter alia, wrongful discharge in violation of Connecticut public policy. Owner moved for judgment on the pleadings as to such claim. The district court held that: (1) no other statutory remedies were available that would preclude employees' claim; (2) Connecticut's public policy against serving alcohol to minors applied even though club operated on Indian reservation; (3) Connecticut had public policy against serving alcohol to minors; (4) even if general manager of casino club, rather than club's owner, was responsible for alleged serving of alcoholic beverages to minor, such fact would not preclude finding of nexus between owner's actions and public policy; and (5) allegations of employees' complaint sufficiently alleged intentional violation of public policy. Motion denied.

97. ***Quair v. Sisco,*** No. 1:02-CV-5891, 2007 WL 1490571 (E.D. Cal. May 21, 2007). This case arises from the decisions by the General Council of the Santa Rosa Rancheria Tachi Indian Tribe ("the Tribe") to banish and disenroll petitioners Roselind Quair and Charlotte Berna ("petitioners"). Petitioners contend that the banishment and disenrollment decisions violate the Indian Civil Rights Act ("ICRA") because petitioners were denied various procedural protections available in federal and state courts. The Tribal Business Committee members of the Santa Rosa Rancheria Tachi Indian Tribe ("respondents") maintain that ICRA does not override tribal sovereignty, which includes the right of the Tribe to follow its own traditional adjudicatory procedures in banishment and disenrollment proceedings. Both petitioners and respondents moved for summary judgment. The court denied petitioners' motion and granted respondents' motion on petitioners' claims relating to disenrollment only.

98. ***Native American Distrib. v. Seneca-Cayuga Tobacco, Co.,*** No. 05-CV-427-TCK-SAJ, 2007 WL 1673535 (N.D. Okla. June 5, 2007). Native American Distributing ("NAD") was a domestic and international distributor of Seneca-Cayuga Tobacco, Company's ("SCTC") tobacco products. NAD alleged that SCTC breached the series of oral and written agreements by (1) selling directly to NAD's customers and exclusive customers of NAD's lower-tier distributors; (2) permitting diversion of products by other, more favored distributors, into NAD's protected territories; (3) undercutting NAD's pricing in both domestic and international markets; and (4) authorizing NAD to open new territories and then refusing to sell products to lower tier distributors recruited by NAD. Before the Court were Defendants Motion to Dismiss and Motion to Dismiss Based Upon Tribal Sovereign Immunity. Defendants argued that the Court lacked jurisdiction because they enjoy tribal sovereign immunity from suit and that the Court lacked subject matter jurisdiction based on the doctrine of tribal sovereign immunity. The individual defendants also argued that the Court lacked an independent basis for federal subject matter jurisdiction. The district court granted the Motions to Dismiss with prejudice.

99. ***Greene v. Commissioner of the Minnesota Dep't of Human Serv.***, No. A06-804, 2007 WL 1746878 (Minn. Ct. App. June 19, 2007). Appellant Green is a member of the Minnesota Chippewa Tribe ("MCT"), which provides employment service to its members pursuant to an agreement, permitted by statute, in which MCT and the state of Minnesota arrange for services to recipients under the Minnesota Family Investment Program ("MFIP"), a public assistance plan for low-income families with children. Appellant contended that without her

100. ***Matheson v. Gregoire,*** No. 35067-0-II, 2007 WL 1988864 (Wash. Ct. App. July 10, 2007). Native American cigarette retailer brought action against State and Tribe, alleging that agreement between State and Tribe regulating taxes on cigarette sales in Indian country was illegal. The superior court dismissed the Tribe and subsequently dismissed the case. Retailer appealed. The appellate court held that: (1) Tribe and Tribe's cigarette tax director were protected by sovereign immunity; (2) Tribe was an indispensable party, such that dismissal of case was warranted; (3) appeal was not frivolous, as would warrant an award of attorney fees. Affirmed.

101. ***Taylor v. River Rock Casino,*** No. C07-1215, 2007 WL 2028744 (N.D. Cal. July 10, 2007). Plaintiff Taylor brought a wrongful death action against defendants River Rock Casino, V. Jenkins, and unnamed security guards of the River Rock Casino, alleging that defendants negligently caused the death of plaintiff's wife. Defendants moved to dismiss the complaint on the principal ground that it was barred by tribal sovereign immunity. The court found that because plaintiff's complaint alleged only a non-federal tort action, and merely anticipated a defense of sovereign immunity, it failed to meet the "arising under" standard required for Section 1331 jurisdiction. Without subject matter jurisdiction, the court could not continue to hear the case. The court granted defendants' motion to dismiss because of lack of subject matter jurisdiction and dismissed the complaint..

102. ***Smith ex rel Fitzsimmons v. United States,*** No. 4:06-019, __ F. Supp. 2d __, 2007 WL 2068336 (D.N.D. July 17, 2007). Guardian ad litem brought suit against government on behalf of minor who was burned on Indian reservation while playing with lighted matches and gasoline, alleging negligence and breach of fiduciary duty by Bureau of Indian Affairs in failing to enforce tribal ordinances concerning nearby abandoned vehicles, from which gasoline was allegedly obtained. Government moved to dismiss. The district court held that officers' alleged conduct in failing to enforce tribal ordinances regarding abandoned vehicles was shielded from tort liability under discretionary function exception to Federal Tort Claims Act. Motion granted.

103. ***Saguaro Chevrolet, Inc. v. United States,*** No. 06-714, __ Fed. Cl. __, 2007 WL 2172767 (Fed. Cl. July 25, 2007). This action was brought by Saguaro Chevrolet, Inc., a tenant of the Colorado River Indian Tribes ("CRIT"), against the government for money damages for breach of a fifty-year lease between plaintiff and CRIT. The Lease was approved by the Secretary of the Interior. The action was before the court on defendant's Motion to Dismiss Plaintiff's Complaint. Defendant asserted that there is no privity of contract between plaintiff and defendant and therefore the court does not have subject matter jurisdiction over plaintiff's claim or, in the alternative, that plaintiff has failed to state a claim on which relief can be granted. The court granted defendant's motion to dismiss.

104. ***Auto-Owners Ins. Co. v. Tribal Court of the Spirit Lake Indian Reservation,*** No. 06-3562, __ F.3d __, 2007 WL 2189094 (8th Cir. Aug. 1, 2007). Insurer filed declaratory judgment action against insured Indian elementary school and education board, seeking determination of whether commercial general liability policy and commercial umbrella policy covered alleged sexual assault of student. The district court denied insured's motion to dismiss and granted insurer summary judgment. Insured appealed. The appellate court held that: (1) court lacked diversity jurisdiction; (2) court lacked federal question jurisdiction; and (3) court lacked supplemental jurisdiction. Reversed and remanded for entry of dismissal.

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105. ***Barber v. Simpson***, No. 2:05-2326, 2006 WL 2548189 (E.D. Cal. Sept. 1, 2006). Plaintiff moved to amend the final judgment entered in favor of defendants under Fed. R. Civ. P. 59(e), and in the alternative, moved for an injunction pending appeal under Rule 62(c). Plaintiff had moved for summary judgment on the issue of whether the Washoe Tribal Court exceeded its jurisdiction by adjudicating an eviction action defendants brought against plaintiff in tribal court to regain possession of allotted land held in trust by the United States. Plaintiff argued the Washoe Tribal Court had exceeded its jurisdiction because the United States was an indispensable party. The order regarding the motion for summary judgment found that since defendants brought the Washoe Tribal Court action to protect, not alienate, Indian trust lands, the United States was not an indispensable party to the eviction action. The order found plaintiff had not shown the Washoe Tribal Court exceeded its jurisdiction, denied his motion for summary judgment, and denied his claims for declaratory and injunctive relief since the claims were premised on the lack of tribal court jurisdiction. Plaintiff's motion to amend the judgment and his motion for an injunction pending appeal were denied.

106. ***Zempel v. Liberty***, No. 04-595, 143 P.3d 123 (Montana Sept. 6, 2006). Underage patron brought negligence action against tavern, tavern's owner, who was tribal member, and tavern's alleged owner, seeking recovery for injuries sustained in automobile accident after bartenders allegedly served patron and continued to serve patron after he was visibly intoxicated. The district court, dismissed defendants. Patron appealed. The Supreme Court held that: (1) fact that owner was tavern's sole shareholder was not, by itself, enough to warrant piercing the corporate veil; (2) consensual-relationship exception to general rule that inherent sovereign powers of Indian tribe do not extend to activities of nonmembers of tribe did not apply; and (3) self-government exception did not apply. Affirmed in part, reversed in part, and remanded.

107. ***Russ v. Dry Creek Rancheria Band of Pomo Indians***, 2006 WL 2619356 (N.D. Cal. Sept. 12, 2006). Pending before the court was defendant's motion to dismiss. This dispute involved a Tribal Redevelopment and Relocation Agreement ("Agreement") executed between plaintiffs and defendant. Under the Agreement, plaintiffs agreed to convey to the Tribe their rights and interests in their residences on the Dry Creek Rancheria Reservation (which had been designated for "economic redevelopment" pursuant to a proposed gaming and casino project). In exchange, the Tribe agreed to help plaintiffs locate permanent replacement housing, provide a monthly "relocation allowance" to the plaintiffs, and pay a certain amount of the cost of such replacement housing. Plaintiffs alleged that the Tribe did not help them find permanent replacement housing and did not provide them with money to purchase replacement housing.

108. ***Parry v. Haendiges,*** No. 06-CV-614S, 2006 WL 2873660 (W.D.N.Y. Oct. 6, 2006). Plaintiff William Parry, a member of the Seneca Nation of Indians, commenced an action pursuant to 42 U.S.C. § 1983 seeking a preliminary injunction to prevent Defendant Deborah A. Haendiges, a New York State Supreme Court Justice, from exercising jurisdiction over a divorce action brought in the state court by his wife, Sally Snow, on the ground that the Seneca Nation of Indians Peacemakers Court had exclusive jurisdiction over the dispute. Both plaintiff and his wife are members of the Seneca Nation of Indians. Parry started an action for divorce in New York State Supreme Court that continued for one year. Only after the state court issued a temporary order for spousal maintenance did Parry seek to invoke the jurisdiction of the Peacemakers Court by petitioning for a restraining order. The Peacemakers Court ultimately declined to exercise jurisdiction based on the pendency of the state court action and dismissed Parry's petition. Parry argued that because the parties to the underlying divorce action are both members of the Seneca Nation who resided on the Nation's Cattaraugus Reservation throughout their marriage, and because their divorce involves both the temporary use and final disposition of real property located within the sovereign territory of the Seneca Nation, exclusive subject matter must rest with the Seneca Nation's Peacemakers Court. The court found that at the outset, Parry selected the state court as his preferred forum and the state court exercised sole jurisdiction over the Parry/Snow divorce proceedings for more than two and one-half years, during the course of which the Peacemakers Court expressly held that it lacked jurisdiction. The court denied Parry's motion for a preliminary injunction.

109. ***Miner Electric, Inc. v. Muscogee (Creek) Nation***, No. 05-CV-359, 464 F. Supp. 2d 1130 (D. Okla. Oct. 10, 2006). Non-Indians, the occupants of a sports utility vehicle ("SUV") and its corporate owners, brought suit against Muscogee (Creek) Nation seeking injunctive relief and declaratory judgment that Nation lacked jurisdiction to enter a civil forfeiture judgment against SUV in which drugs were found while occupants were visiting Indian casino. Non-Indians moved for summary judgment. The district court held that: (1) tribal court's inherent authority to regulate persons doing business on reservation did not give it authority to forfeit property of non-Indian patrons of Indian casino; (2) tribe's inherent authority to regulate internal affairs which directly impact the tribal health or welfare did not extend to permit forfeiture of non-Indian vehicle in which controlled substance was found; (3) court could not assume civil forfeiture jurisdiction over non-Indian property for purposes of punishing owner for criminal act; and (4) tribal court forfeiture order violated Excessive Fines Clause. Motion for summary judgment granted.

110. ***LaVallie v. Turtle Mountain Tribal Court***, No. 4:06-77, 2006 WL 3498559 (D.N.D. Dec. 1, 2006). Before the court was plaintiff's Petition for Habeas Corpus Relief and defendant's Motion to Dismiss for Failure to Exhaust Tribal Court Remedies. The petition for habeas corpus relief challenged the validity of plaintiff's conviction in tribal court on charges of disorderly conduct. In addition, he challenged the tribal court's decision to revoke his probation. The court granted defendant's motion and denied Plaintiff's Petition for Habeas Corpus Relief without prejudice.

111. ***Elliott v. White Mountain Apache Tribal Court***, 3:05-04240, 2006 WL 3533147 (D. Ariz. Dec. 6, 2006). Plaintiff filed a complaint seeking declaratory and injunctive relief against defendants to enjoin the prosecution of a civil action in the White Mountain Apache Tribal Court and for a declaratory judgment that the tribal court may not exercise jurisdiction over plaintiff. The tribal complaint in district court asserted claims against Plaintiff, a non-Indian, seeking civil penalties including restitution for violations of the White Mountain Apache Tribe government and game and fish codes as well as acts of negligence and trespass. Plaintiff challenged the jurisdiction of the White Mountain Apache Tribal Court during the course of litigation in that court, filing a motion to dismiss for lack of jurisdiction citing the Supreme Court's ruling in *Montana v. United States*, 450 U.S. 544 (1981). Plaintiff's motion was denied at the tribal trial court level and the tribal appellate court dismissed Plaintiff's appeal finding that it did not possess the requisite jurisdiction to hear the appeal because a final order had not yet been issued in the case. The district court addressed issues of: (1) exhaustion of tribal remedies; (2) appropriateness of tribal jurisdiction; and (3) exceptions to tribal jurisdiction and granted defendant's motion to dismiss without prejudice.

112. ***Soap v. Vann***, No. 5:06cv224, 2006 WL 3694537 (E.D. Tex. Dec. 14, 2006). Petitioner Soap filed a notice of removal under 28 U.S.C. § 1441 seeking to remove a suit for the termination of parental rights filed against him in the District Court for the Cherokee Nation in Oklahoma. The case was referred to the Magistrate Judge. Soap claims he is the father of a minor child whose grandparents filed suit in the Cherokee Nation Court seeking adoption of the child and the termination of Soap's parental rights. Soap sought removal based on diversity of citizenship. The Magistrate Judge recommended that the petition for removal be denied, stating that Soap cannot remove a lawsuit pending in Oklahoma to the federal district court in Texas and that he failed to meet his burden of showing that the federal district court had jurisdiction in the case. The court concluded that the Magistrate Judge's Report was correct and that plaintiff's objections were without merit. It overruled plaintiff's objections and adopted the Report of the Magistrate Judge as the opinion of the District Court. It is further remanded the case to the District Court for the Cherokee Nation.

113. ***Reed v. U.S. Bank National Ass'n***, No. 05-36174, 2006 WL 3697802 (9th Cir. Dec. 15, 2006). Not selected for publication in the Federal Reporter. Plaintiff Reed appealed from the district court's order rescinding the registration of an alleged judgment of the Pembina Nation Little Shell Band Federal Tribal Circuit Court ("Pembina court"). The appellate court found that the district court did not abuse its discretion in declining to recognize the Pembina court judgment because the Pembina Nation Little Shell Band is not a federally recognized tribe, and Reed offered no valid basis for concluding the Pembina court had jurisdiction over the underlying dispute. The appellate court affirmed.

114. ***Nord v. Kelly,*** No. 05-1135, 2007 WL 313599 (D. Minn. Jan. 31, 2007). This case arose from an automobile accident that occurred within the confines of the Red Lake Indian Reservation. Defendant Kelly, a member of the Red Lake Band of Chippewa Indians ("Red Lake Band"), brought a personal-injury action against plaintiffs Chad Nord and Dennis Nord ("the Nords"), who are not members of the Red Lake Band in defendant Red Lake Nation Tribal Court ("Tribal Court"). The Nords then filed an action seeking a declaration that the Tribal Court lacks personal and subject-matter jurisdiction over them. There were three motions pending before the district court: (1) the Nords moved for summary judgment; (2) the Tribal Court moved to dismiss the Nords' complaint for failure to state a claim; and (3) the Tribal Court moved in the alternative for an order continuing the summary judgment hearing and permitting discovery under Rule 56(f) of the Federal Rules of Civil Procedure. The district court denied the tribal court's motion to dismiss, motion to continue hearing, and motion for Rule 56(f) discovery. It granted Plaintiffs' motion for summary judgment and declared that defendant Red Lake Nation Tribal Court lacked jurisdiction over any claims related to the car accident and permanently enjoined defendants Red Lake Nation Tribal Court and Kelly from proceeding further in the Red Lake Nation Tribal Court in connection with any claims arising out of the accident.

115. ***Prairie Band Potawatomi Nation v. Wagnon,*** No. 03-3322, __ F.3d __, 2007 WL 365921 (10th Cir. Feb. 6, 2007). Native American tribe sought order requiring Kansas state officials to grant recognition to motor vehicle registrations and titles issued by tribe. The United States District Court for the District of Kansas, 276 F. Supp. 2d 1168, Julie A. Robinson, J., granted summary judgment for tribe. State officials appealed. The Court of Appeals for the Tenth Circuit, 402 F.3d 1015, affirmed. On grant of certiorari, the United States Supreme Court vacated and remanded. On remand, the Court of Appeals, McKay, Circuit Judge, held that: (1) officials' refusal to grant recognition to motor vehicle registrations and titles issued by tribe located within the state impermissibly discriminated against tribe; (2) officials were not entitled to sovereign immunity; and (3) permanent injunction did not violate the Tenth Amendment. Affirmed.

116. ***Keller Paving & Landscaping Inc. v. Zaste,*** No. 4:06-092, 2007 WL 703198 (D.N.D. Mar. 2, 2007). Before the district court was defendants' motion for dismissal. This matter arose from a construction contract dispute between Keller Paving and Landscaping, Inc., ("Keller Paving") and Keith Zaste and Bruce Morin, who are members of the Turtle Mountain Band of Chippewa Indians residing on the Turtle Mountain Indian Reservation and doing business as KB Construction. Defendants had previously filed a complaint in the Turtle Mountain Tribal Court alleging that Keller Paving had entered into a construction contract with them to perform concrete work, that Keller Paving breached the contract, and that the Defendants were damaged in the amount of $25,634.56. Defendants also filed a motion with the Turtle Mountain Tribal Court requesting that the Tribal Court freeze Keller Paving's assets and/or revenue derived from another construction contract. The Tribal Court granted the order and assets in the amount of $112,312.70 were frozen by the Tribal Court. Defendants filed a motion to dismiss stating that: (1) the district court lacks subject matter jurisdiction; (2) plaintiffs' complaint failed to state a claim for relief; and (3) plaintiffs failed to exhaust tribal remedies as there is an action pending in Tribal Court. The district court granted defendant's motion to dismiss without prejudice stating that the parties are required to exhaust tribal court remedies.

117. ***Schmidt v. Louise Big Boy,*** No. Civ. 05-5036, 2007 WL 858419 (D.S.D. Mar. 20, 2007). Plaintiff, Janis Schmidt, filed a complaint alleging violations of her constitutional rights arising from her eviction from land located on the Pine Ridge Indian Reservation. The pro se complaint presented multiple federal and state-law causes of action against defendants. Defendants moved for summary judgment. Oglala Sioux Tribe Associate Judge Lisa F. Cook ordered Schmidt to leave real property located within the borders of the Pine Ridge Indian Reservation. In the order, Judge Cook found Schmidt was a non-Indian who voluntarily consented to enter into a verbal landlord-tenant agreement with Louise Big Boy that allowed Schmidt to stay on Big Boy's land free of charge. Schmidt refused to leave the property. Judge Cook issued a second order authorizing Schmidt's immediate removal from the property. The second order instructed the Oglala Sioux Tribe Department of Public Safety to "eject" Schmidt, a trespasser, and turn her over to the United States Marshal, sheriff, or other officer of the state of South Dakota or Nebraska. The court granted defendants' motion for summary judgment.

118. ***Moses-Hyipeer v. Yakama Nation,*** No. CV-05-3087, 2007 WL 981777 (E.D. Wash. Mar. 23, 2007). Before the court was Defendants' Motion to Dismiss Plaintiffs' Complaint for Lack of Subject Matter Jurisdiction and Failure To State A Claim Upon Which Relief May Be Granted. Defendants argued that Plaintiffs are barred from retrying their lawsuit which was decided and dismissed by order of the Tribal Court based on sovereign immunity. Plaintiffs did not request reconsideration nor did they file an appeal with the Tribal Court. Instead, prior to the Tribal Court ruling Plaintiffs filed a complaint under the Indian Civil Rights Act ("ICRA"), 25 U.S.C. § 1302(6) and (8), seeking damages and declaratory relief that they be rehired by the Yakama Nation. Defendants argued that Plaintiffs are barred on res judicata grounds as well as lack of subject matter jurisdiction in the district court. The district court found that neither 28 U.S.C. § 1343(1)(4) nor 25 U.S.C. § 1302(6),(8) provide a basis for jurisdiction and suits against the tribe and tribal officers under the ICRA are barred by sovereign immunity. The district court found that the Tribal Court has exclusive jurisdiction over the matter. The court granted Defendants Motion to Dismiss, and since it found subject matter jurisdiction lacking refrained from ruling on the alternative Fed.R.Civ.P. Rule 12(b)(6) basis for dismissal.

119. ***Progressive Specialty Ins. Co. v. Burnette,*** No. 06-3013, 2007 WL 1202752 (D.S.D. Apr. 19, 2007). Progressive Specialty Insurance Company ("Insurer"), acting through an insurance agency, sold in Nebraska a policy of automobile insurance to Rodney Bordeaux. Bordeaux was the "insured" but Jody Waln ("Waln") was listed on the policy as a "driver." Wahn and Bordeaux are both enrolled members of the Rosebud Sioux Indian Tribe, common law spouses as recognized by the Tribe, and residents of the reservation. Waln was involved in an accident on the Reservation with an uninsured motorist who is also an enrolled member of the Tribe. The accident was investigated by tribal police and no citations were issued. Waln was injured and sustained damages. The policy provided limits of $50,000 per person for all damage claims involving an uninsured motorist. Disputes arose between Waln and Insurer. Waln then sued Progressive Insurance Company (rather than Insurer) in tribal court, alleging claims for breach of contract, bad faith, negligence in not bringing to the attention of Waln the availability of increased and supplemental coverages, and punitive damages. The uninsured driver was alleged to have been negligent but was not a named party. Insurer paid Waln $50,000.00 without a release and without a dismissal of any cause of action alleged in the tribal lawsuit. Earlier, payments were made under the medical payments coverage of the policy. The medical payments coverage under the policy had limits of $5,000.00 per person and the policy limits were

120. ***Ford Motor Co. v. Todecheene,*** Nos. 02-17048, 02-17165, 488 F.3d 1215 (9th Cir. 9th Cir. June 4, 2007). After parents of tribe member killed in one-vehicle accident on Indian reservation filed product liability action against non-member vehicle manufacturer in tribal court, manufacturer brought action in federal court for declaratory judgment and preliminary injunction. The district court, 221 F. Supp. 2d 1070, granted preliminary injunction, and parents appealed. Following affirmance, parents moved for rehearing and rehearing en banc. On rehearing, the appellate court, 474 F.3d 1196, remanded to the district court, and manufacturer moved for rehearing and rehearing en banc. The appellate court, amending and superseding its previous opinion, held that tribal court did not "plainly" lack jurisdiction. Petitions granted in part, denied as moot in part, and denied in part. "The order filed February 1, 2007, is hereby amended. The entire text shall be replaced with the following text. Joe and Mary Todecheene's Petition for Rehearing is GRANTED in part. The opinion in this case, *Ford Motor Co. v. Todecheene*, 394 F.3d 1170 (9th Cir. 2005) is WITHDRAWN. The tribal court did not "plainly" lack jurisdiction under the second exception, recognized in *Montana v. United States*, 450 U.S. 544, 565 (1981), to the general rule that tribes do not have jurisdiction over non-members. *See Boozer v. Wilder*, 381 F.3d 931, 935 (9th Cir. 2004) (requiring exhaustion unless the tribal courts plainly lack jurisdiction). As such, the appeal is stayed until Ford exhausts its appeals in the tribal courts. The panel retains jurisdiction over the appeal. Ford will be deemed to have exhausted its tribal remedies once the Navajo Nation Supreme Court either resolves the jurisdictional issue or denies a petition for discretionary interlocutory review pursuant to Navajo Nation Code tit. 7, § 303 ("The Supreme Court [of the Navajo Nation] shall have the power to issue any writs or orders ... [t]o prevent or remedy any act of any Court which is beyond such Court's jurisdiction."). The parties shall notify this court no later than 15 days from the date the Navajo Nation Supreme Court either denies a petition for discretionary review, or, if the Navajo Nation Supreme Court grants such a petition, the issuance of its opinion resolving the jurisdictional question. The petitions for rehearing en banc filed by Joe and Mary Todecheene and the Navajo Nation are DENIED as moot, and the petitions for rehearing and rehearing en banc filed by Ford Motor Company are DENIED."

121. ***Plains Commerce Bank v. Long Family Land and Cattle Co., Inc.,*** No. 06-3093, __ F.3d __, 2007 WL 1814661 (8th Cir. June 26, 2007). Non-Indian bank commenced action, seeking declaratory judgment that tribal court judgment, upholding jury verdict against bank for discriminatory lending practices to Indian owners and their family farming and ranching corporation, was null and void. The district court, 440 F. Supp. 2d 1070, granted owners summary judgment. Bank appealed. The appellate court held that: (1) bank's transactions with owners and corporation were consensual relationships; (2) tribal tort claim arose under inherent tribal authority to regulate nonmembers' activities and had nexus to parties' consensual relationship; (3) tribal tort law applied; and (4) bank was not denied due process. Affirmed.

122. ***Macarthur v. San Juan County,*** Nos. 05-4295, 05-4310, __ F.3d __, 2007 WL 2045456 (10th Cir. July 18, 2007). Plaintiffs sought enforcement of several preliminary

123. ***Harris v. Parisian,*** No. CV-06-143, 2007 WL 2159363 (D. Mont. July 25, 2007). Plaintiff Harris filed an action seeking a declaratory ruling invalidating the 2001 Crow Constitution based on its alleged elimination of a voting district for tribal members who do not live on the Crow Reservation. The Magistrate Judge entered Findings and Recommendations as follows: (1) the Tribal Defendants' Motion to Dismiss should be granted for failure to exhaust Tribal Court remedies and the claims against the Tribal Defendants be dismissed without prejudice; (2) Defendant Parisian's Motion to Dismiss should be granted and the claims against him be dismissed with prejudice. Although Plaintiff filed objections to the Magistrate's recommendations, the court adopted the Findings and Recommendation and granted the defendants' motions to dismiss.

L. TAX

124. ***Allen v. C.I.R.,*** No. 06-2292, 2006 WL 3193648 (7th Cir. Nov. 6, 2006). From 1999 through 2001 Michael Allen received income for his services as Vice-Chairman of the Lac Du Flambeau Band of Lake Superior Chippewa Indians and executive director of the Great Lakes Intertribal Council. Allen omitted this income from his tax returns for 1999 and 2000. The Internal Revenue Service concluded that Allen owed substantial taxes for these years, plus interest and penalties for the inaccurate returns. Allen contested the determinations in the Tax Court, which sided with the Commissioner and ordered Allen to pay a total approximating $50,000. The appellate court found that although the Band and the Council are non-taxable entities, the income Allen received from those entities is taxable. Affirmed.

125. ***McNeil v. Anderson,*** No. 06-5117, 2006 WL 3804591 (10th Cir. Dec. 28, 2006). Not selected for publication in the Federal Reporter. Plaintiff McNeil, an Oklahoma resident, appealed from the district court's dismissal of his complaint against the Tax Assessor asserting a

126. ***Winnebago Tribe of Nebraska v. Kline***, No. 94,781, 2007 WL 283704 (Kan. Feb. 2, 2007). Indian tribes brought action seeking injunctive relief and a determination that the motor-fuel tax law does not authorize assessment of tax on motor fuel delivered and sold by a Nebraska tribal corporation to tribes in Kansas for on-reservation retail sale. The district court certified question of law. The Supreme Court held that: (1) distributor of first receipt is liable for payment of the motor fuel tax; (2) importers are not included within the meaning of "distributors"; and (3) tribal corporation did not "receive" fuel within state and, thus, did not fall within definition of "distributor" and was not liable for motor fuel tax. Certified question answered.

127. ***Keweenaw Bay Indian Community v. Rising,*** No. 05-2398, __ F.3d. __, 2007 WL 599745 (6th Cir. Feb. 28, 2007). Keweenaw Bay Indian Community brought action against Treasurer of the State of Michigan, and two police officers to challenge the state's efforts to tax tobacco products sold by the Community and several searches and seizures of tobacco products shipped to the Community. Community brought suit after the State changed the manner in which it collected tobacco and motor fuel taxes. State now requires all wholesalers to collect the tax at the point of sale even when the retail purchaser is an Indian tribe or tribal-member. The district court dismissed the Community's claims after granting two separate motions for summary judgment brought by the state defendants. On appeal, the Community argued, among other issues that (1) the legal incidence of the tobacco tax falls on the Community and its members rather than non-tribal members, in violation of federal law; (2) the searches and seizures of tobacco shipments to the Community were unconstitutional usurpations of federal authority to regulate the mails; and (3) the searches violated the Community's sovereign immunity. The appellate court affirmed the district court's entry of summary judgment on behalf of the state.

128. ***United States v. Smiskin,*** Nos. 05-30590, 05-30591, 487 F.3d 1260, 2007 WL 1452928 (9th Cir. May 18, 2007). Defendants Kato and Harry Smiskin are members of the Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation"). Agents of the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") seized 4,205 cartons of unstamped cigarettes from Harry Smiskin's residence, located on the Yakama Indian Reservation. ATF Agents suspected the Smiskins of transporting unstamped cigarettes from

M. TRUST BREACH AND CLAIMS

129. ***Soldano v. United States***, No. 03-17391, __ F.3d __, 2006 WL 1897081 (9th Cir. July 12, 2006). Injured motorcyclist sued United States under Federal Tort Claims Act ("FTCA"), alleging that his collision with automobile on National Park Service road was due to government's negligence. The district court granted summary judgment for government, and motorcyclist appealed. The appellate court held that: (1) expert testimony as to level of obscuring vegetation on road was insufficient to establish negligent maintenance; (2) discretionary function exception applied to Service's failure to place sign at particular location on road; but (3) discretionary function exception did not apply to Service's establishment of particular speed limit for road, since park road standards did not justify that speed limit for road's conditions. Affirmed in part and reversed and remanded in part.

130. ***Osage Tribe of Indians of Oklahoma v. United States,*** Nos. 99-550 L, 00-169 L, __ Fed. Cl. __, 2006 WL 2708045 (Fed. Cl. Sept. 21, 2006). Indian tribe brought suit against the United States alleging that the government violated its duty as trustee of the tribe's mineral estate by failing to collect all moneys due from tribal oil leases and to deposit and invest those moneys as required by statute and according to the fiduciary duty owed to the tribe. The appellate court held that: (1) government breached its fiduciary duty to tribe by not collecting oil royalties based on highest "offered prices"; (2) government breach its fiduciary duty by failing to apply the highest posted price or offered price paid to producers of unregulated stripper oil to the calculation of royalty payments during months when federal price controls on the sale of crude oil were in effect; (3) government breached its fiduciary duty by its failure to promptly deposit royalty funds depositing funds; (4) government breached its fiduciary duty failing to prudently invest cash balances of income in excess of $25,000; and (5) government breached its fiduciary duty by failing to obtain highest available investment yields on funds derived from royalties during the months of January 1976, May 1979, November 1980, February 1986, and July 1989. Judgment for plaintiff.

131. ***Chippewa Cree Tribe of Rocky Boy's Reservation v. United States,*** No. 92-675 L., __ Fed. Cl. __, 2006 WL 2831042 (Fed. Cl. Sept. 27, 2006). Before the court was Defendant's Motion for Reconsideration of a Portion [of] the Court's Opinion and Order. The Opinion referenced by defendant's motion is *Chippewa Cree Tribe of the Rocky Boy's Reservation v. United States,* 69 Fed. Cl. 639 (2006). Defendant moved the court pursuant to Rules 54(b) and 59(a) of the Rules of the Court of Federal Claims to "reconsider[ ] . . . the ruling declaring that the Pembina Judgment Fund ("PJF") per capita beneficiaries are an 'identifiable group' under the Indian Tucker Act, 28 U.S.C. § 1505, for purposes of litigating claims that the United States mismanaged PJF monies, and designating the Tribal Plaintiffs as the representatives of that group." The court denied defendant's Motion for Reconsideration.

132. ***Washakie v. United States***, No. CV-05-462-E-BLW, 2006 WL 2938854 (D. Idaho Oct. 13, 2006). Before the court was the United States' Motion to Dismiss. Oren Washakie filed a Federal Tort Claims Act ("FTCA") action, alleging that he was assaulted while in the Fort Hall Jail by officers of the Fort Hall Police Department and that, after the assault, the police placed him in an isolation cell and ignored his requests for medical attention for over eight hours. Washakie claimed that the Shoshone-Bannock Tribe, the Fort Hall Police Department and the Police Department are, for the purposes of the FTCA, part of the Bureau of Indian Affairs ("BIA"). The United States filed a motion to dismiss for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) arguing that although the tribal police officers are federal employees they are not federal law enforcement officers within the meaning of the FTCA. Based upon this premise, the United States argued that the assault and battery exception to the FTCA applied, there is no waiver of sovereign immunity under the FTCA, and the case was therefore subject to dismissal for lack of subject matter jurisdiction. The court granted the motion to dismiss to the extent it claimed Washakie was intentionally assaulted by the Fort Hall tribal police, but denied the motion to the extent it alleged that tribal police and EMTs negligently or intentionally failed to provide adequate medical care for the injuries suffered by Washakie.

133. ***Shoshone-Bannock Tribes of Fort Hall Reservation v. United States,*** No. CV-02-009, 2006 WL 2949527, (D. Idaho Oct. 16, 2006). Before the court was Defendants' Motion for Summary Judgment. Plaintiffs are members of the Shoshone-Bannock Tribes of the Fort Hall reservation who receive farm lease income annually. Plaintiffs' claims stemmed from the court-ordered shutdown of the Department of Interior's computer system in 2001, which resulted in late payments to Plaintiffs for their farm lease income for calendar year 2002. After several failed attempts to settle the case, the court certified the case as a class action. Defendants were seeking summary judgment based on lack of jurisdiction. The court found that even if it assumed, as required for purposes of the motion, that the Secretary or his designees failed to comply with specific regulatory requirements, it did not follow that those requirements should be enforced by a damage remedy. The court was persuaded that the limited duties placed on the Secretary by Part 162 call for a correspondingly limited remedy, to wit, the right to challenge the offending leases through an administrative process that is reviewable in district court. This process is capable of protecting the allottees from improper leases, and its effectiveness is evidenced by the actual administrative outcome in this case. The district court granted Defendants' Motion for Summary Judgment.

134. ***Hayes v. United States***, No. 06-254 L, __ Fed. Cl. __, 2006 WL 3072565 (Fed. Cl. Oct. 30, 2006). Son of deceased Indian allottee brought suit against the United States

alleging that the Bureau of Indian Affairs ("BIA") improperly stopped oil and gas royalty payments to allottee in order to pay overdue state and federal taxes on the property of allottee. Defendant moved to dismiss. The Court of Federal Claims held that: (1) for purposes of statute of limitations, claim accrued on date BIA official issued authorization of payment letters that revoked direct payment of royalties to allottee and ordered oil and gas lessees to submit the payments to the BIA Royalty Management Program; (2) current suit did not relate back to prior case which was dismissed without prejudice, for purpose of tolling statute of limitations; and (3) continuing claim doctrine was not applicable to running of statute of limitations.

135. ***Rosebud Sioux Tribe v. United States***, No. 05-1023, __ Fed. Cl. __, 2007 WL 60844 (Fed. Cl. Jan. 5, 2007). Indian tribe brought suit against the United States alleging that the Secretary of Interior breached fiduciary duties owed to the tribe in the handling of various lawsuits which arose out of government-approved lease of tribal lands for the construction and operation of pork production facilities. Defendant moved for judgment on the pleadings. The Court of Federal Claims held that: (1) factual issues regarding accrual precluded summary dismissal on statute of limitation grounds; (2) suit was not an impermissible collateral attack on consent judgment which settled lessee's breach of lease claims; and (3) tribe stated a viable cause of action for breach of fiduciary duty. Motion granted in part and denied in part.

136. ***Felter v. Kempthorne***, No. 06-5092, 2007 WL 120302 (D.C. Cir. Jan. 19, 2007). Plaintiffs, claiming to be "mixed-blood" members of the Ute Indian Tribe, brought action against the Department of the Interior ("DOI"), alleging that the Ute Partition & Termination Act ("UPA") wrongfully terminated their status as federally recognized Indians and deprived them of reservation assets. The district court, 412 F. Supp. 2d 118, granted DOI's motion to dismiss. Plaintiffs appealed. The appellate court held that: (1) action accrued when plaintiffs' status as recognized Indians was terminated and the reservation's assets were distributed; (2) lasting effects of termination were not continuing violations; (3) equitable tolling did not apply; but (4) remand was required to determine whether six-year limitations period for civil actions brought against the United States was modified by the Department of the Interior and Related Agencies Appropriations Act. Remanded.

137. ***LeBeau v. United States,*** No. 06-1072, __ F.3d __, 2007 WL 163071 (Fed. Cir. Jan. 24, 2007). The United States appealed from the final judgment of the District Court in *LeBeau v. United States*, 334 F. Supp. 2d 1200 (D.S.D. 2004) ("Barry LeBeau "). The district court granted summary judgment against the United States in favor of plaintiff Barry LeBeau and a class of similarly situated individuals (collectively "the LeBeau plaintiffs"). The LeBeau plaintiffs sought money damages under the Little Tucker Act, 28 U.S.C. § 1364(a)(2), for the United States' alleged breach of trust, based on what they asserted was the Secretary of the Interior's unreasonable delay in distributing to them their share of the Mississippi Sioux Tribes Judgment Fund ("Judgment Fund"). The district court determined that the Secretary of the Interior had breached his trust duties owed to the LeBeau plaintiffs and awarded money damages to the plaintiffs in the total amount of $1,827,985.80 and entered judgment accordingly. The appellate court held that the district court erred in its determination that the LeBeau plaintiffs were entitled to money damages as a result of the Secretary's breach of trust. It reversed the court's judgment in favor of the plaintiffs and remanded the case to the district court for entry of judgment in favor of the United States.

138. ***Walters v. United States***, No. 06-2705, __ F.3d __, 2007 WL 209982 (8th Cir. Jan. 29, 2007). Several persons injured in car accidents on stretch of road within Indian reservation brought claims against the Bureau of Indian Affairs ("BIA"), alleging failure to maintain road. The district court granted summary judgment to government. Accident victims appealed. The appellate court held that discretionary function exception barred suit. Affirmed.

139. ***Andrade ex rel. Goodman v. United States,*** No. CIV-05-3240, 2007 WL 433576 (D. Ariz. Feb. 6, 2007). Plaintiff Andrade, as the legal guardian of his grandson, Anthony, filed a Federal Tort Claims Act ("FTCA") complaint alleging that two minor children under the care of Child Protective Services ("CPS") of the Colorado Indian Tribe ("CRIT") who were placed in his custody as a foster parent allegedly sexually assaulted Anthony. Plaintiff alleged that (1) CRIT CPS knew, or should have known, that the minors had a history and propensity for acting out sexually; (2) it was foreseeable that the minors would act out sexually against another minor; (3) CRIT CPS was aware that plaintiff's grandson resided with him when it placed the minors with him; (4) CRIT CPS breached its duty to act safely and reasonably by placing the minors in plaintiff's home and by failing to inform him of the minors' history and propensity to act out sexually; (5) the BIA entered into a contract with CRIT and that by entering into the contract, CRIT and its employees were employees of the federal government while performing work under the contract. The Court found that (1) CRIT CPS is not an employee of the United States for purposes of the FTCA; (2) there is sufficient basis to assert Plaintiff's claims of negligence against the United States based upon the actions or omissions of CRIT Social Services; and (3) an amended complaint including CRIT Social Services as the appropriate CRIT entity in allegations against the United States is proper. The court granted the United States Motion to Dismiss for lack of subject jurisdiction and dismissed plaintiff's Complaint without prejudice, and with leave to amend within 21 days.

140. ***Wolfchild v. United States,*** Nos. 03-2684L, 01-568L, __ Fed. Cl. __, 2007 WL 1227691 (Fed. Cl. Apr. 27, 2007). Lineal descendants of Mdewakanton Sioux who were loyal to the United States during the Sioux Outbreak in Minnesota during 1862 brought suit against the United States for breach of trust originally provided for the benefit of loyal Mdewakanton. The Shakopee Mdewakanton Sioux Community and the Prairie Island Indian Community filed motion to quash summonses issued to bring them into the case. Groups of intervening plaintiffs and applicants for intervention filed motions seeking to add or regroup intervening plaintiffs. The Court of Federal Claims held that third party summons issued to the Prairie Island and Shakopee Indian Communities of Minnesota to appear and defend their interests in the case would be quashed for absence of case or controversy.

141. ***Yankton Sioux Tribe v. United States Dep't of Health & Human Serv.,*** No. 06-4180, __ F. Supp. 2d __, 2007 WL 2022202 (D.S.D. July 9, 2007). Indian tribe and individual member of tribe sued United States Indian Health Service ("IHS"), seeking writ of mandamus, injunction, and declaratory judgment, to prevent closure of IHS emergency room, and asserting that IHS violated due process, federal trust responsibility, and federal statutes. IHS moved to dismiss case with prejudice. The district court held that: (1) prior decisions granting and dissolving injunction were both final decisions rendered on merits; (2) parties were same as in prior suit or in privity to each other by virtual representation; (3) due process claim was barred by res judicata; (4) claim of alleged failure to follow impact report requirements was barred by res judicata; (5) claim of alleged failure to consult with tribe was barred by res judicata; (6) claim of alleged failure to update impact report annually was barred by res judicata; and (7) general

142. ***Garreaux v. United States,*** No. 06-502, __ Fed. Cl. __, 2007 WL 2193886 (Fed. Cl. July 27, 2007). Plaintiff sought damages for breach of the lease agreement which she entered into with a local housing authority and which was supervised by the federal government, and for negligence in administering the lease agreement. Plaintiff's complaint alleged that the government had committed breach of contract and had committed a wrong under Article I of the 1868 Fort Laramie Treaty by the following: breach of the MHOA, failure to properly administer the MHOA, failure to provide safe, sanitary and healthy living conditions as mandated by the Indian Housing Act, and negligence due to administration and breach of the MHOA. Defendant's Motion to Dismiss for lack of subject matter jurisdiction pursuant to RCFC 12(b)(1) was granted and the case was dismissed with prejudice.

N. MISCELLANEOUS

143. ***Bone Shirt v. Hazeltine***, No. 05-4010, __ F.3d __, 2006 WL 2404139 (8th Cir. Aug. 22, 2006). Indian voters sued state of South Dakota alleging that legislative redistricting plan ("plan") violated the Voting Rights Act. Following determination that plan violated § 5 of the Voting Rights Act, 200 F. Supp. 2d 1150, determination that plan violated § 2 of the Voting Rights Act, 336 F. Supp. 2d 976, and answer to certified question by South Dakota Supreme Court, 700 N.W.2d 746, the legislature declined to submit new plan. The district court, 387 F. Supp. 2d 1035, entered an order imposing a remedial redistricting plan proposed by Indian voters. State appealed. The appellate court held that: (1) proposed remedial plan did not violate Equal Protection Clause; (2) district court did not abuse its discretion in admitting expert testimony; (3) district court did not clearly err in determining that Native-Americans were politically cohesive and that white majority voting bloc usually defeated Indian-preferred candidate; (4) totality of circumstances indicated violation of § 2; and (5) district court did not abuse its discretion in adopting remedial plan. Affirmed.

144. ***Zander v. Zander***, No. A05-2094, 2006 WL 2405687 (Minn. Ct. App. Aug. 22, 2006). In divorce proceeding, the district court dissolved parties' marriage, granted parties joint legal and physical custody of children, and ordered division of parties' marital property, after which former wife's motion for amended findings or a new trial was denied. Former wife appealed. The appellate court held that: (1) trial court did not abuse its discretion by denying former wife's motion for amended findings relating to former husband's residence; (2) trial court did not abuse its discretion in denying former wife's motion for new trial on grounds of fraud or newly discovered evidence; (3) evidence supported award to parties of joint legal and physical custody of children; (4) monthly per capita payments that former wife, who was member of Indian tribe, received from tribal community were marital property subject to division between parties; and (5) trial court did not abuse its discretion in equally dividing marital property. Affirmed.

145. ***United States v. Cote***, No. 05-30519, 2006 WL 2497979 (9th Cir. Aug. 30, 2006). Not selected for publication in the Federal Reporter. Defendant Cote pleaded guilty to one count of embezzlement from an Indian tribal organization in violation of 18 U.S.C. § 1163. The

146. ***Kesser v. Cambra,*** No. 02-15475, __ F.3d __, 2006 WL 2589425 (9th Cir. Sept. 11, 2006). Prisoner filed petition for writ of habeas corpus, challenging state court murder conviction. The district court, 2001 WL 1352607, denied petition. Prisoner appealed. The appellate court found that prosecutor in state murder trial improperly struck Native American woman as potential juror on basis of her race; prosecutor's rationale that woman was "self-important" regarding her work for tribe was belied by testimony of other panel members that they could not leave their work; claim that woman was overly emotional about justice system was under-developed; use of woman's family background relied upon personal prejudices; and prosecutor's racial animus was consistent with treatment of other minority panel members. The appellate court reversed and remanded.

147. ***Illinois Native American Bar Ass'n (INABA) v. The Univ. of Illinois by its Board of Trustees***, No. 1D06-0290, 2006 WL 2684269 (Ill. App. Ct. Sept. 19, 2006). Students and Native American association brought action against State University alleging that performances by Indian Chief mascot at University football games violated the Civil Rights Act. The circuit court dismissed plaintiffs' complaint, and plaintiffs appealed. The appellate court held that Civil Rights Act did not by implication repeal statute recognizing Indian Chief mascot as the honored symbol of the University.

148. ***Jimerson v. Tetlin Native Corp.***, No. S-11757, 144 P.3d 470 (Alaska, Sept. 29, 2006). Former board members of Native corporation moved to enforce settlement agreement between Native corporation and its shareholders and directors, which provided for transfer of Alaska Native Claims Settlement Act ("ANCSA") stock back to Native corporation in exchange for stock in a newly created corporation. The superior court determined that settlement agreement was unenforceable. Former board members appealed. The Supreme Court held that settlement agreement was unenforceable for violating ANCSA prohibition on alienation of shares. Affirmed.

149. ***United States v. Refert,*** No. CR 05-30090, 2006 WL 2920838 (D.S.D. Oct. 10, 2006). Before the court was defendant's motion for a judgment of acquittal or a new trial. The defendant, an attorney admitted to practice before the state and federal courts of South Dakota, was convicted by a jury of all counts under a five count indictment for health care fraud and making false claims against the government. The claims involved questions as to whether or not the defendant is, as she claimed, an Indian with enrollment in a federally recognized tribe. The government claimed that she did not qualify and that she knew of her lack of eligibility for Indian Health Service ("IHS") benefits. Defendant claimed to be an enrolled member of the Northern Cheyenne Indian Tribe ("Cheyenne") but a Cheyenne official testified that neither the defendant nor anyone else named Refert had ever been on the tribal enrollment rolls. The court denied defendant's motion for judgment of acquittal or motion for new trial.

150. ***Doe v. Kamehameha Schools/Bernice Pauahi Bishop Estate,*** No. 04-15044, __ F.3d __, 2006 WL 3489836 (9th Cir. Dec. 5, 2006). Non-Native Hawai'ian applicant brought suit against private high schools under § 1981, challenging school policy of giving preference to students of Native Hawai'ian ancestry. The district court, 295 F. Supp. 2d 1141, entered summary judgment for schools, and applicant appealed. The appellate court, 416 F.3d 1025, affirmed in part and reversed in part. Rehearing en banc was granted. The appellate court held that school policy of giving preference to students of Native Hawai'ian ancestry did not violate § 1981. Affirmed.

151. ***Arakaki v. Lingle,*** No. 04-15306, __ F.3d __, 2007 WL 430650 (9th Cir. Feb. 9, 2007). This case was brought to challenge state programs restricting benefits to "native Hawaiians" or "Hawaiians." Plaintiffs are citizens of the State of Hawaii who allege that various state programs preferentially treat persons of Hawaiian ancestry, in violation of the Fifth and Fourteenth Amendments, 42 U.S.C. § 1983, and the terms of a public land trust. Plaintiffs claim standing to sue as taxpayers and as beneficiaries of the public land trust. In a series of orders, the district court held that Plaintiffs lacked standing to raise certain claims and that Plaintiffs' remaining claims raised a nonjusticiable political question, and dismissed the entire lawsuit. In a prior opinion, the appellate court affirmed in part and reversed in part. *Arakaki v. Lingle*, 423 F.3d 954 (9th Cir. 2005). The Plaintiffs filed a petition for certiorari, which the Supreme Court denied. *Arakaki v. Lingle*, 126 S. Ct. 2861 (2006). On the state's petition for certiorari the Supreme Court granted the petition, vacated the appellate court's prior judgment and remanded for further consideration in light of *DaimlerChrysler Corp. v. Cuno*, 547 U.S. ___, 126 S. Ct. 1854 (2006). On remand the appellate court held that Plaintiffs lacked standing to sue the federal government and that the district court therefore correctly dismissed all claims to which the United States is a named party or an indispensable party. However, it reversed the district court's finding that Plaintiffs demonstrated standing as state taxpayers to challenge those programs that are funded by state tax revenue and for which the United States is not an indispensable party. In light of the Supreme Court's decision in *DaimlerChrysler*, the appellate court held that Plaintiffs, as state taxpayers, lack standing to bring a suit claiming that the OHA programs funded by state tax revenue violate the Equal Protection Clause of the Fourteenth Amendment. Although it is not clear that any Plaintiffs have standing in any other capacity to challenge the OHA programs, the appellate court remanded to the district court for further proceedings. Finally, the appellate court held that if any Plaintiffs are able to establish standing, their challenge to the appropriation of tax revenue to the OHA does not raise a nonjusticiable political question. The appellate court affirmed in part, reversed in part, and remanded.

152. ***United States v. Falcon,*** No. 06-1438, __ F.3d __, 2007 WL 464873 (8th Cir. Feb. 14, 2007). Yvette Falcon, an enrolled member of the Turtle Mountain Band of Chippewa Indians, was the elected chief clerk of the Tribe's court. The charges against her arose from the use of travel funds obtained and disbursed under her signature or under the signature of a convicted coconspirator. The jury rejected Falcon's characterization of her role as a non-supervisory, non-responsible party and accepted the testimony of tribal officials. Falcon was convicted by a jury of one count of conspiring to commit an offense against the United States in violation of 18 U.S.C. § 371 and two counts of embezzlement or misapplication of funds from an Indian tribal organization in violation of 18 U.S.C. § 1163 and she was sentenced Falcon to an 18-month imprisonment. Falcon appealed, alleging insufficient evidence and plain error in the jury instructions. The appellate court found that substantial evidence supported the verdict and affirmed the judgment of the district court.

153. ***Minchumina Natives, Inc. v. U.S. Dep't of Interior,*** No. 4:04-00027, 2007 WL 2069907 (D. Alaska July 13, 2007). Plaintiff's complaint asked the court to declare its rights with respect to land sought from the United States and to review a decision by the Board of Land Appeals ("IBLA") which had determined that Minchumina Natives Incorporated was ineligible for such a benefit under the Alaska Native Claims Settlement Act ("ANCSA"). The IBLA decision is the latest in a series of decisions relating to a 1976 application made by Minchumina Natives Incorporated. The district court earlier ruled that MNI lacked capacity to pursue its declaratory judgment action. The appellate court remanded the case for further proceedings in light of MNI's argument on appeal that after the district court rendered its decision, the State of Alaska reinstated an entity's corporate status with retroactive effect. The appellate court did not evaluate that argument. Instead, it directed this court to answer five questions. The questions the district court was directed to answer are the following: (1) Did this court dismiss the non-profit corporation MNI, or the for-profit corporation Minchumina Natives Incorporated ("MNFP"), or both? (2) Which entity did the state reinstate in 2005, MNI or MNFP? (3) Was reinstatement made pursuant to AS 10.06.960(k)? (4) Was MNFP a Native Village corporation, or a Native Group corporation? (5) Does the reinstatement apply retroactively? The district court concluded that DOI is entitled to judgment as a matter of law that plaintiff lacks capacity to prosecute this action. The defendant's motion was granted.

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