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Article By:

Brian L. Pierson

Selected Court Decisions

In *Chippewa Cree Tribe of Rocky Boy's Reservation v. United States Department of Interior*, 2018 WL 3978542 (9th Cir. 2018), the Chippewa Cree Tribe of Rocky Boy's Reservation (Tribe) had received over $27 million in funds under the American Recovery and Reinvestment Act (ARRA), also known as "stimulus" funds, in 2009 and 2010 to complete construction of a water pipeline on its reservation under agreements that required the Tribe to comply with the Act's whistleblower protections, and specifically provided that those protections would be "enforceable pursuant to processes set up by ARRA." Ken St. Marks owned a construction company that was involved in building the pipeline paid for by the stimulus funds. In August 2012, St. Marks reported to the Department of Interior (DOI) that he believed members of the Tribe, including individuals on the Tribe's governing Committee, were misusing ARRA funds. Three months later, members of the Tribe elected St. Marks to serve as Chairman of the Committee. The Committee subsequently removed St. Marks from his position on March 25, 2013, for "neglect of duty and gross misconduct." Pursuant to St. Marks' whistleblower complaint, the DOI determined that the Tribe had engaged in a prohibited reprisal and awarded St. Marks approximately $650,000, including back pay, front pay, travel costs and legal fees and ordered the Tribe "to stop any and all reprisals against St. Marks arising out of" his whistleblower activities. Recognizing that reinstating St. Marks would necessarily implicate issues of "tribal sovereignty and self-determination," the Department did not require the Tribe to restore St. Marks to his position as Chairman. On the Tribe's petition for review, the Ninth Circuit affirmed the DOI's decision, holding that:

1. notwithstanding his status as an elected official, St. Marks fell within the definition of "employee" for purposes of the Act's whistleblower provisions,

2. the DOI's order did not infringe the Tribe's sovereignty since "[r]eversing the Department's order on tribal sovereignty grounds otherwise would allow the Tribe to reap the benefits of the stimulus funds while using its sovereign status to shirk the Act's requirements,"

3. the Tribe was not entitled to a hearing because the Act did not provide for one, and

4. the DOI's conclusion that the removal was retaliatory was reasonable.

In *Crow Creek Sioux Tribe v. United States*, 2018 WL 3945585 (Fed. Cir. 2018), the Crow Creek Sioux Tribe, which is located in South Dakota along the Missouri River, sued the United States in the Court of Federal Claims (Claims Court) seeking damages and declaratory and injunctive relief for the alleged taking of its water rights in violation of the Fifth Amendment, and for the alleged mismanagement of its water rights under the doctrine of ***Winters v. United States***, 207 U.S. 564 (1908), in violation of 25 U.S.C. § 162a(d)(8), which provides that the federal government "[a]ppropriately manag[e] the natural resources located within the boundaries of Indian reservations." The Claims Court dismissed the case for lack of subject-matter jurisdiction and the Federal Circuit affirmed: "Thus, water is only reserved for the Tribe under *Winters* to the extent needed to accomplish the purpose of the reservation … The facts alleged in the complaint, taken as true, suggest that government action, including operation of the Pick-Sloan dams, generally affects water flows on the Missouri River. But the complaint does not allege that the amount of water flowing by the Reservation and available for the Tribe's use is insufficient to fulfill the purposes of the Reservation or will be insufficient in the future. The Tribe therefore has failed to allege injury in fact, as necessary to demonstrate standing." (Citations and internal quotations omitted.)

In *Gila River Indian Community v. United States Department of Veterans Affairs*, 2018 WL 3863856 (9th Cir. 2018), the Gila River Indian Community and Gila River Health Care Corporation (Community) sued the Department of Veterans Affairs (VA) for failing to reimburse the community for the care it provides to veterans at tribal facilities, arguing that two provisions of the Patient Protection and Affordable Care Act require the VA to reimburse it even absent an agreement defining the terms of reimbursement. The district court dismissed the community's lawsuit for **lack of jurisdiction**. The Ninth Circuit affirmed, holding that:

1. the community's suit was barred by Section § 511(a) of the Veterans' Judicial Review Act, which provides that "[t]he Secretary shall decide all questions of law and fact necessary to a decision by the Secretary under a law that affects the provision of benefits by the Secretary to veterans or the dependents or survivors of veterans" and that "[s]ubject to subsection (b), the decision of the Secretary as to any such question shall be final and conclusive and may not be reviewed by any other official or by any court,

2. the presumption in Montana v. Blackfeet Tribe of Indians that statutes are to be construed liberally in favor of the Indians, did not apply to § 511(a) because the Blackfeet Tribe presumption only applies to federal statutes that were passed for the benefit of Indian tribes, and

3. the Community's argument that the district court had jurisdiction under 28 U.S.C. § 1362 was waived because the Community did not raise it in the district court.

In *United States v. King Mountain Tobacco Company*, Inc., 2018 WL 3826230 (9th Cir. 2018), Wheeler, Sr., a member of the Yakama Nation in Washington State, operated King Mountain Tobacco Company, a manufacturer of cigarettes and roll-your-own tobacco, on land held in trust for him. King Mountain initially obtained tobacco from external sources but, by the end of 2013, King Mountain's products were composed of at least 55% of tobacco grown on allotted land held in trust. King Mountain refused to pay **federal excise taxes** imposed on manufactured tobacco products, including cigars, cigarettes, and roll-your-own tobacco. The government sued and obtained a judgment of $57,914,811.27. The Ninth Circuit affirmed, rejecting King Mountain's argument that the federal taxes on trust lands were barred by the General Allotment Act and the Treaty with the Yakamas of 1855, "Relying on *Capoeman's* language and the General Allotment Act, several

circuits—including ours—have recognized federal tax exemptions for allotment land or the 'income derived directly' from such land. … None of these cases however, supports King Mountain's exemption from a federal tax on manufactured tobacco products at issue in this appeal. First, that tax is an excise tax, not a tax on land or income. … King Mountain concedes as much. But no court has held that the General Allotment Act's tax exemption extends to a federal excise tax of any kind. … [T]he Treaty with the Yakamas does not contain 'express exemptive language' sufficient to relieve King Mountain of its liability for the federal excise tax on manufactured tobacco products. For that reason, we also decline to apply the Indian canons of construction when analyzing the Treaty's provisions. … We affirm our longstanding rule that Indians—like all citizens—are subject to federal taxation unless expressly exempted by a treaty or congressional statute."

In *Alabama-Quassarte Tribal Town v. United States*, 2018 WL 3829245 (10th Cir. 2018), the Alabama-Quassarte Tribal Town (AQTT), a federally acknowledged tribe, had sued the United States, the Secretary and the Associate Deputy Secretary of the Department of Interior (DOI) and the Secretary of the U.S. Department of the Treasury alleging that certain lands in Oklahoma known as the Wetumka Project, **held in trust** for the Creek Indian Tribe, were purchased under the Oklahoma Indian Welfare Act (OIWA) for the benefit of the AQTT, that the associated "Surface Lease Trust Income" belonged to the AQTT and that the contrary decision by the Interior Board of Indian Appeals (IBIA) was arbitrary and capricious. The district court upheld the IBIA's decision and the Tenth Circuit affirmed; "We conclude that the IBIA's determination was supported by substantial evidence and was not arbitrary or capricious. The deeds of conveyance for the Wetumka Project lands plainly placed the land in trust for the Creek Nation. They did not create a vested beneficial interest in any other entity. Citing general trust law principles on settlor intent, AQTT unpersuasively argues that it is the beneficial owner of the funds at issue. … But the deeds of conveyance do not evince intent for AQTT to beneficially own the funds in the first instance. Rather, the deeds contemplate a two-step process under which the lands are first held in trust for the Creek Nation and second assigned by the Secretary of the Interior to another tribe. AQTT fails to present any evidence that the Wetumka Project lands and the income derived therefrom were ever actually assigned to AQTT."

In *California v. Iipay Band of Santa Ysabel*, 898 F.3d 960 (9th Cir. 2018), the Iipay Nation of Santa Ysabel (Nation), through a wholly owned subsidiary, Santa Ysabel Interactive (SYI), offered to all California residents over 18 years of age Desert Rose Bingo (DRB), a bingo game that allows patrons to play computerized bingo over the internet on a set of servers that are located in Iipay's tribal lands. The state sued, contending that DRB violated the **Unlawful Internet Gambling Enforcement Act** (UIGEA), which bars unlawful Internet gambling, which is defined to mean "to place, receive, or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made." The district court rejected the Nation's argument that DRB constituted gaming on Indian lands permissible under the Indian Gaming Regulatory Act (IGRA) and granted the state summary judgement. The Ninth Circuit affirmed: "Iipay is correct that IGRA protects gaming activity conducted on Indian lands. However, the patrons' act of placing a bet or wager on a game of DRB while located in California constitutes gaming activity that is not located on Indian lands, violates the UIGEA, and is not protected by IGRA. Further, even if Iipay is correct that all of the 'gaming activity' associated with DRB occurs on Indian lands, the patrons' act of placing bets or wagers over the internet while located in a jurisdiction where those bets or wagers is illegal makes Iipay's decision to accept financial payments associated with those bets or wagers a violation of the UIGEA."

In *Carter v. Tahsuda*, 2018 WL 3720025, Fed.Appx. (9th Cir. 2018), plaintiffs challenged the constitutionality of the **Indian Child Welfare Act**, but the district court dismissed the case for lack of

standing the Ninth Circuit affirmed on the ground of mootness: “Plaintiffs’ adoptions all became final. The relief Plaintiffs sought to redress their alleged injuries is no longer available to them. … The named plaintiffs are no longer subject to ICWA, and they do not allege that they will be in the imminent future. … Plaintiffs’ suggestion that their belated addition of a claim for nominal damages saves the case from mootness fails. While Plaintiffs were still in the district court, they had seen the possibility that all their claims for injunctive and declaratory relief could become moot, so they filed an amended complaint adding a claim for nominal damages under Title VI of the Civil Rights Act against the Director of Arizona’s Department of Child Safety. … Plaintiffs have never alleged actual or punitive damages. They can cite no case supporting the proposition that a claim for nominal damages, tacked on solely to rescue the case from mootness, renders a case justiciable.”

In the matter of *In Re: Great Plains Lending, LLC, Litigation*, 2018 WL 3737985 (United States Judicial Panel on Multidistrict Litigation 2018), the Judicial Panel on Multidistrict Litigation denied the motion of Great Plains Lending, LLC, a tribally owned **internet lending** business, to consolidate three lawsuits pending in the Northern District of California, the Middle District of North Carolina and the Eastern District of Virginia either in the Western District of Oklahoma or, alternatively, in the Northern District of Texas: “There is no dispute that this litigation involves common factual questions relating to an alleged ‘rent-a-tribe’ scheme by a lender, Think Finance, LLC, designed to evade state usury laws that limit the amount of interest lenders can charge on loans. Plaintiffs allege that Think Finance issued loans using tribal entities (Great Plains and Plain Green) as fronts so as to benefit from tribal sovereign immunity. Even so, the common factual issues presented by these actions are not particularly numerous or complex. Great Plains’ motion focuses on the potential for duplicative discovery and pretrial practice with respect to its assertion of tribal sovereign immunity. But there are only three actions before the Panel, and plaintiffs in two of these actions are represented by the same counsel. In these circumstances, alternatives to centralization, such as informal cooperation among the relatively few involved attorneys and coordination among the involved courts, are eminently feasible and will be sufficient to minimize any potential for duplicative discovery or inconsistent pretrial rulings.”

In *Tlingit-Haida Regional Housing Authority v. United States Department of Housing and Urban Development*, 2018 WL 4103495 (D. Colo. 2018), numerous tribes challenged efforts by the Department of Housing and Urban Development (HUD) to recapture, via administrative offset, **Indian Housing Block Grant funds** that HUD had allegedly overpaid to the tribes under the Native American Housing Assistance and Self-Determination Act (NAHASDA). The tribes argued that HUD lacked authority to recapture the funds without first providing them with administrative hearings. The Tenth Circuit had held that:

1. the recapture did not occur under a statute or regulation that imposed a hearing requirement,

2. HUD lacked the authority to recapture the funds by administrative offset, but that

3. the court could not order HUD to repay the funds to the tribes to the extent that HUD had already redistributed recaptured funds because the waiver of the federal government’s sovereign immunity under the Administrative Procedure Act does not extend to claims for money damages. 881 F.3d 1181 (10th Cir. 2017).

The court remanded to the district court “for factual findings regarding whether, at the time of the district court’s order, HUD had the relevant funds at its disposal.” On remand, the HUD defendants filed a motion for restitution, requesting that the court require the Tribes to repay amounts previously

distributed by HUD during the litigation pursuant to previous judgments that were in excess of amounts "available" to HUD under the standard established by the Tenth Circuit. The court denied the motion: "From what sources would the plaintiff Tribes find the funds for repayment? There is no suggestion that the funds received from payment of the judgments have not been used for purposes relating to the needs for housing assistance to their members. Are the Tribes to use future grants for housing made by the formula to make repayment, thereby shorting the use of funds for meeting the housing needs of their people? That is the understanding apparent in the request that if repayment is ordered the Tribes should be given the opportunity to set a repayment period of 6 to 12 years depending on the date of original seizure. … After HUD effected the illegal recaptures, it redistributed the recaptured funds, and equity does not favor allowing HUD to recover the judgment amounts for the purpose of making another redistribution. When asked at the hearing why the payments of the judgments were made during the appeal process, counsel for HUD said, 'I think they thought it was, you know, the equitable thing to do.' He was right. The equitable thing for the Court to do now is to deny the motion for restitution."

In *Consumer Financial Protection Bureau v. Think Finance*, 2018 WL 3707911 (D. Mont. 2018), Think Finance and its subsidiaries (Think Finance) provided debt collection services to several internet lending companies owned by Indian tribes. The Consumer Financial Protection Bureau (CFPB) sued Think under the Consumer Finance Protection Act (CFPA), alleging that, through the tribal lenders, Think Finance collected loan payments that customers did not owe, as the loans issued to those customers were void ab initio due to violations of state law, that Think Finance used unfair and abusive practices to collect on these void loans and that Think Finance provided substantial assistance to Tribal Lenders and other entities who, in turn, committed deceptive, unfair, and abuse acts or practices by demanding payment for and collecting void debts. Think Finance, supported by amicus brief from the tribal lenders, moved to dismiss, arguing that the structure of the CFPB was unconstitutional, CFPB's claims are not permitted by the CFPA, the Complaint failed to join the tribal lenders which were indispensable parties that could not be joined because of sovereign immunity, that the Court lacks personal jurisdiction over one of the Think Finance subsidiaries and that some of the claims against the subsidiaries were time-barred. The court disagreed and denied the motion: "The argument that CFPB seeks to enforce state law fails for similar reasons. The CFPA declares it unlawful for 'any covered person or service provider ... to engage in any unfair, deceptive, or abusive act or practice.' …The fact that state law may underlie the violation—for example, to operate to void a loan, as alleged here—does not relieve Defendants, or any other covered person or service provider, of their obligation to comply with the CFPA. … The Court remains keenly aware of the tribal sovereign immunity doctrine and sensitive to the doctrine's implications for litigation in federal court. …The Court notes, however, that the extent of the remedies sought by the CFPB arguably will not impede the Tribal Lenders' ability to collect on their contracts or enforce their choice of law provisions directly. Under these circumstances, the Court will not create a means for businesses to avoid regulation by hiding behind the sovereign immunity of tribes when the tribes themselves have failed to claim an interest in the litigation. The same Tribal Lenders notably have claimed an interest in the ongoing Pennsylvania litigation by providing declarations in support of Think Finance and Subsidiaries' Motion to Dismiss for Failure to Join Indispensable Parties."

In *Rabang v. Kelly*, 2018 WL 3630295 (W.D. Wash. 2018), persons disenrolled from the Nooksack Tribe sued current and former members of the Nooksack Tribal Council and other tribal government officials, alleging that the defendants violated the federal Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1964 (RICO), by abusing their positions within the tribal government to defraud the defendants of money, property, and benefits by depriving them of their tribal membership. Specifically, the plaintiffs alleged that the defendants illegally postponed elections, took legislative action without a required quorum, and prevented plaintiffs and their attorneys from

challenging defendants' actions in the Nooksack Tribal Court. The Department of Interior (DOI) had issued a series of decisions declaring that it would not recognize the legislative or judicial actions taken by the Tribe until a special election was held in accordance with tribal law. The court had previously stayed the case the DOI's determination of the government that the DOI would recognize. As a result of elections held in late 2017 and 2018, the DOI formally acknowledged the Tribe's government. Following the tribal government's voluntary dismissal of a previously filed interlocutory appeal in the Ninth Circuit, the district court dismissed for lack of **subject matter jurisdiction**: "In general, Indian tribes possess inherent and exclusive power over matters of internal tribal governance. … The determination of tribal membership has long been recognized as a matter of internal tribal governance to be determined by tribal authorities. … While Plaintiffs are correct that federal courts have jurisdiction over RICO claims, they refuse to acknowledge that resolution of their claims—whether on summary judgment or at a jury trial—would ultimately require the Court to render a decision about Plaintiffs' enrollment status. … Plaintiffs cannot eliminate this inherent issue just by bringing their challenge as a civil RICO action. … The parties strenuously dispute whether Defendants' actions were taken in accordance with Tribal law and the Nooksack Constitution. … To resolve these disputes, the Court would necessarily have to make rulings on tribal law that go beyond the scope of a district court's jurisdiction.

In *JP Morgan Chase Bank, N.A. v. Yamassee Tribal Nation*, 2018 WL 3629940 (E.D. Cal. 2018), Khamsanvong obtained a residential loan in the amount of $108,989.00, secured by a deed of trust, encumbering real property in Porterville, California. JP Morgan Chase Bank (Plaintiff or Chase) serviced the loan until October 1, 2015, when Carrington Mortgage Services, LLC (Carrington) became the loan servicer. Carrington started non-judicial foreclosure proceedings on the property, and, on September 30, 2016, caused a notice of default to be recorded against title to the property. In 2016, the Yamassee Supreme Court issued an "Order to Show Cause/Default Judgment/Writ of Restituion [sic] In The Event Defendants Fail To Respond Within 21 Days Of Receipt Of This Order," naming Chase and Jamie Dimon, Chase's Chief Executive Officer, as defendants, asserting that Khamsanvong was "an enrolled tribal member of the Yamassee tribal nation" and that the property was in "Indian country" and seeking an accounting, restitution and $25 million in damages. On January 13, 2017, Plaintiff, through a special appearance, responded to the Order to Show Cause, objecting to the Yamassee Tribal Nation and the Yamassee Supreme Court's purported jurisdiction over Plaintiff and Mr. Dimon. Plaintiff never received a response to its objection. Plaintiff sued in federal court, seeking a judicial declaration that the Yamassee Tribal Nation or the Yamassee Supreme Court lacked any personal or subject matter jurisdiction over Plaintiff or its executives and a permanent injunction against Defendants prohibiting them from any further effort to exercise jurisdiction. The magistrate judge recommended granting the motion for declaratory relief but denying the motion of a permanent injunction on the ground that the Yamassee court did not pose a significant threat: "The Yamassee Tribal Nation … is not a **federally recognized Indian tribe** entitled to the immunities and privileges available to other federally recognized Indian tribes, including adjudicative authority pursuant to the exercise of inherent sovereign authority. Thus, the Yamassee Tribal Nation has no adjudicative jurisdiction and any judgment issued by the Yamassee Supreme Court is necessarily null and void. … The issuance of a declaration that the Yamassee Tribal Nation has no adjudicative authority would in effect inhibit the Yamassee Supreme Court and the Yamassee Tribal Nation from any further effort to exercise jurisdiction over Plaintiff. Thus, Plaintiff has an adequate available legal remedy in the form of declaratory relief."

In *McCoy v. Salish Kootenai College, Inc.*, 2018 WL 3824147 (D. Mont. 2018), McCoy sued Salish Kootenai College, Inc. for sex-based discrimination under Title VII of the Civil Rights Act of 1964 and the Montana Human Rights Act. After the parties engaged in jurisdictional discovery to determine whether the College was an arm of the Confederated Salish and Kootenai Tribes, the court granted

the College's motion to dismiss on the ground of **sovereign immunity**, applying the five-factor test prescribed by the Ninth Circuit in *White v. University of California*: "An entity that functions as an arm of a tribe likewise falls within the scope of the Indian tribe exemption of Title VII … Although McCloy insists that the state-incorporated College is a different entity than the tribal-incorporated College, the incorporation status does not divest the College of its tribal status … state incorporation of dual incorporation does not divest a tribal corporation of its tribal status. … the Tribal Council appoints and removes Board members – all of whom must be enrolled members of the Tribes – and has the right to review Board actions." (Internal quotes and citations omitted.)

In *Gustafson v. Poitra*, 2018 WL 4087949 (N.D. 2018), Gustafson, the non-Indian owner of fee land within the Turtle Mountain Chippewa Reservation, brought an action in state court to quiet title after Poitras, a member of the Tribe, filed liens against Gustafson's land based on lease payments allegedly owed Poitras relating to different property within the reservation. Poitras contested the state court's jurisdiction on the ground that the Tribal Court had jurisdiction, but the court disagreed and the North Dakota Supreme Court affirmed: "This is not an action by the Poitras to collect on a claimed breach of a lease of their land to Gustafson. …. Rather, this is a quiet title action by Gustafson, a non-Indian owner of fee land within the reservation, to clear his record title to the land and to recover damages for the Poitras' conduct in filing a lessor's lien with the Rolette County Register of Deeds and notifying Gustafson's bank about the lessor's lien. … Gustafson's quiet title action works no additional intrusion on tribal relations or self-government and does not imperil the subsistence of the Tribe or the tribal community and cannot fairly be called catastrophic for tribal self-government. … We conclude the district court did not err in deciding the **tribal court does not have jurisdiction** over Gustafson's action to quiet title and to recover damages under the *Montana* exceptions."

In the case of *In the Matter of P.T.D*., 2018 WL 4001051 (Mont. 2018), P.T.D., a minor born in 2014 and eligible for membership in the Fort Peck Indian Tribe, was removed from his mother's custody in 2015 and placed with various relatives. When the relatives proved unable to care for P.T.D., the Montana Department of Public Health and Human Services (Department) sought a permanent placement. P.T.D.'s putative father, A.M., refused to submit to a paternity test or otherwise cooperate. On January 12, 2017, the Department filed a petition to terminate A.M.'s parental rights. At a March 20, 2017 hearing, Birth Mother formally relinquished her parental rights. The District Court held a hearing on the petition regarding A.M.'s parental rights on April 10, 2017. A.M.'s attorney appeared by the judicial video network and A.M. appeared by telephone. On April 25, 2017, the District Court issued an order terminating A.M.'s parental rights. The District Court found that the Department had made reasonable efforts under the **Indian Child Welfare Act** (ICWA) to reunite P.T.D. with his family, but that A.M. had not cooperated. By that time, the child had been in foster care for nearly two years and A.M. had no meaningful contact with P.T.D. and had not established a relationship with the child. The Montana Supreme Court agreed and affirmed: "A.M. argues that the Department failed to prove beyond a reasonable doubt that it made active efforts to reunify A.M. and P.T.D. … Although the District Court order does not comply with ICWA requirements, the § 1912 ICWA provisions do not apply because a family relationship does not exist. A.M. is not listed on the birth certificate as P.T.D.'s father. At the termination hearing on April 10, 2017, A.M. stated that he has not provided any financial support to P.T.D. or P.T.D.'s caretakers. A.M. also explained that he never had custody of P.T.D. and has only seen P.T.D. on two occasions. The first time A.M. met P.T.D. was when P.T.D. was one year old and their contact lasted about an hour to an hour and a half. The second and only other time A.M. and P.T.D. had contact was for about one minute. Child Protection Specialist Dana Kjersem testified that A.M. has made no efforts to take care of P.T.D., failed to participate in a scheduled family meeting, failed to show up for two scheduled paternity tests, and has never called, spoken with, or left a message for her or other Department personnel regarding

P.T.D. Overall, Kjersem testified that A.M. has not expressed any interest in parenting P.T.D."

In *Robbins v. Mason County Title Insurance Company*, 2018 WL 4090197 (Wash. App. 2018), the Robbinses sued Mason County Title Insurance Company (MCTI), which had insured the title to their property, after MCTI refused to defend against a claim by the Squaxin Island Tribe that the 1854 Treaty of Medicine Creek (Treaty) gave it the right to take shellfish on the Robbinses' tidelands. MCTI argued, inter alia, that the treaty claims were excluded "public or private easements not disclosed by the public records." The Robbinses also argued that because MCTI unreasonably breached its duty to defend, the company acted in bad faith as a matter of law and should be estopped from denying coverage. The trial court granted MCTI summary judgment, but the Court of Appeals reversed, holding that MCTI owed a duty to defend under the policy, that its failure to do so constituted bad faith, and that MCTI was estopped from denying coverage: "We agree with the Robbinses that, under Washington law, the Tribe's treaty rights are not **easements** and that therefore the general exception does not apply. Consequently, we need not reach whether it is conceivable to argue the Tribe's treaty rights were 'disclosed by the public records.'" The court remanded for consideration of MCTI's affirmative defenses.

In *State v. White*, 2018 WL 3623955 (Mo. App. 2018), White was convicted in Missouri state court of the class D felony of driving without a valid license, third or subsequent offense. On appeal, he argued that the trial court lacked jurisdiction, and that he had a valid driver's license issued by the "Pembina Nation Little Shell Band of North America" which the State of Missouri was obliged to recognize as a valid license of a nonresident "issued to him in his home state or country." The Missouri appellate court disagreed and affirmed the conviction: "Pembina Nation is not on the list maintained by the Secretary of the Interior. … Absent **federal recognition**, a tribe has no legal relationship with the federal government and lacks the federally sanctioned authority to function legally and politically. … White, even if a member of the Pembina Nation, does not have standing to argue that section 302.020 violates the United States Constitution as applied to a Tribal Nation, because the Pembina Nation itself is not recognized as a Tribal Nation. In other words, because White is not a member of a federally recognized Tribal Nation, he does not have standing to argue that section 302.020 violates the Constitution as applied to a Tribal Nation." (Internal quotations and citations omitted.)

In *Drabik v. Thomas*, 2018 WL 3829155 (Conn App. 2018), Drabik entered into discussions with AT&T regarding the siting of a cellular communications tower on his property. Pursuant to a public notice and comment process, the Mohegan Tribe of Indians of Connecticut (Tribe) Historic Preservation Office objected to the tower on the ground that it would adversely impact properties of traditional religious and cultural significance to the Tribe. AT&T withdrew. Drabik filed a petition for a "bill of discovery" in state court, naming Thomas, the Tribe's deputy tribal historic preservation officer, and Quinn, the Tribe's historic preservation officer, as defendants and seeking information regarding the asserted tribal interests. The court dismissed on sovereign immunity grounds and the appellate court affirmed: "The act of **subjecting a sovereign to prelitigation discovery** in order to uncover information necessary to establish facts that, ultimately, could support probable cause to sustain a cause of action against the sovereign would negate one purpose of sovereign immunity, which is to prevent the interference that litigation creates. We therefore conclude that the same overarching concern applies with equal force to a petition for a bill of discovery. Defendants cloaked with sovereign immunity are immune from suit and, therefore, immune from a bill of discovery to help establish facts necessary to commence a suit."

National Law Review, Volume VIII, Number 261