

Indian Law News

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2004 Annual Convention Indian Law Program Speakers Announced

The Indian Law Section is proud to announce the Indian Law Program for the 2004 Annual State Bar Convention next May in Madison.

The working title is “*Tribal Courts in Wisconsin: Moving Forward.*”

The speakers and their topics include:

Brian L. Pierson,
General Indian Law Update

John R. Wilhelm,
U.S. v. Lara

John E. Jacobson,
Teague v. Bad River Tribe

R. Terry Hoyt,
Lac du Flambeau court system

Hon. Kimberly M. Vele,
Future of Tribal Courts

The program is scheduled for 1:10 to 5:05 p.m., Thursday, May 6, 2004 at the Monona Terrace Convention Center.

See you there! ■

Selected Court Decisions

Winnebago Tribe of Nebraska, et al. v. Stovall, et al., 341 F.3d 1202 (10th Cir. 2003), is the latest decision in the ongoing dispute between the Winnebago Tribe of Nebraska and the Kansas Department of Revenue. HCI Distribution, a tribally-chartered corporation, purchases motor fuel from nonreservation sources in Nebraska and Iowa, transports the fuel to HCI facilities on the Winnebago Reservation in Nebraska, blends an alcohol additive with the fuel, and sells the fuel to customers, including Indian tribes in Kansas. Kansas attempted to impose a vehicle fuel tax on HCI that, under state law, falls on the “distributor of first receipt.” HCI refused to pay the tax on the ground that its sales to the other tribes took place on the Winnebago Reservation and were, therefore, beyond the reach of the state’s taxing power. After the state seized HCI’s trucks, the Tribe sued in federal court for declaratory and injunctive relief. The District Court granted the Tribe a preliminary injunction prohibiting further interference by the state pending trial. The Tenth Circuit Court of Appeals held that (1) the District Court had no obligation to abstain, under the Younger doctrine from deciding the case pending completion of state criminal proceedings against HCI executives, (2) the issue whether the state could tax sales by the Winnebago Tribe to Kansas Tribes was predominantly a federal issue, (3) in granting the Tribe a preliminary injunction, the district court was not required to impose a bond, and (4) the state’s 11th Amendment immunity did not preclude the granting of injunctive relief against the state.

In *American Federation of Govt. Emp. v. U.S.*, 330 F.3d 513 (D.C. Cir. 2003), unsuccessful bidders on a federal contract

sued after a contract was awarded to a company organized by an Alaskan native corporation established under the Alaska Native Claims Settlement Act. The court held that § 8014 of the Defense Appropriations Act for fiscal year 2000, which grants an outsourcing preference for Indian-owned firms does not constitute race discrimination. Consistent with *Morton v. Mancari*, the preference is based on the federal government’s trust responsibility toward tribes.

In *Seneca-Cayuga Tribe of Oklahoma v. NIGC*, 327 F.3d 1019 (10th Cir. 2003), the 10th Circuit Court of Appeals upheld a ruling by the District Court that a particular gaming machine was a Class 2 pull tab-type “technologic aid” rather than a gambling device prohibited by the Johnson Act.

In *re Sac and Fox Tribe*, 340 F.3d 749 (8th Cir. 2003), involved a dispute between the Tribe’s elected tribal council and a tribal council appointed by a group of tribal members opposed to the elected council. The appointed council occupied tribal buildings and took control of the Tribe’s casino. After the NIGC ordered the casino closed, the elected council sued. The 8th Circuit Court of Appeals held that (1) the interim NIGC order of closure was not reviewable by the Federal Court, (2) the District Court’s enforcement of the NIGC’s order to close the casino was correct, (3) the District Court should have addressed the elected council’s IGRA-related claims, (4) the Court had no jurisdiction over the elected council’s claims seeking return of tribal governmental facilities because federal courts have no jurisdiction “to resolve internal tribal disputes, interpret tribal constitutions and laws, and issue tribal membership determi-

Selected Court Decisions

(from cover)

nations.”

In *re Indian Gaming Related Cases*, 331 F.3d 1094 (9th Cir. 2003) was a combined action of multiple tribes against the State of California. The tribes alleged that the state’s compact negotiation demands were not in good faith, as required by the Indian Gaming Regulatory Act. The Court held that (1) requiring gaming tribes to share revenues with nongaming tribes was permissible under IGRA, and (2) the State did not act in bad faith by insisting that tribes adopt special distribution trust fund provisions as a precondition to entering into a state compact.

In *Oneida Nation of New York v. City of Sherrill*, 337 F.3d 139 (2nd Cir. 2003), the Tribe contested state attempts to tax tribal property owned in fee simple within the reservation recognized in a 1794 Treaty with the United States. The land had been conveyed to the state in the 19th century pursuant to agreements that, contrary to the Indian Nonintercourse Act, were not approved by the federal government. The 2nd Circuit Court of Appeals held that (1) the property was within Indian country, (2) a treaty providing for potential removal of the Tribe was insufficient to diminish or disestablish the reservation, (3) and lands owned by the Tribe in fee simple that had never been alienated by Congress were not subject to state taxation.

In *Kaw Nation v. Springer, et al.*, 2003 W.L. 22005982 (10th Cir. 2003), the 10th Circuit Court of Appeals held that 18 U.S.C. § 1163, which makes it a federal crime to embezzle or steal property belonging to an Indian tribe, does not create a private right of action that would permit a Tribe to sue a former official in federal court.

In *United States v. Big Crow*, 327 F.3d 685 (8th Cir. 2003), Gerald Big Crow, a tenant of the Oglala Sioux La Cota Housing Authority, had underpaid his rent for ten years, accruing a rental liability exceeding \$57,000. The federal government indicted Big Crow under 18 U.S.C. § 1163, which provides criminal penalties for persons who embezzle, steal or convert

any “monies, funds, credits, goods, assets, or other property belonging to any Indian tribal organization.” The 8th Circuit Court of Appeals held that the statute, pursuant to its common law interpretation, could not be applied to occupancy of rental premises.

In *Sharber v. Spirit Mountain Gaming, Inc.*, 343 F.3d 974 (9th Cir. 2003), the 9th Circuit Court of Appeals affirmed the District Court, holding that (1) even in the absence of a pending tribal court case, the Federal District Court should abstain and give tribal courts the first opportunity to determine whether they have jurisdiction to hear actions based on the Family Medical Leave Act (“FMLA”), and (2) the tribal exhaustion requirement also applies to a determination of the Tribe’s immunity from suit. See 2003 W.L. 21147447.

In *Mayes v. Cherokee Nation*, 2003 W.L. 21354687, a Chapter 7 debtor moved to avoid a judgment lien possessed by an Indian tribe, alleging impairment of an exemption. The Tribe moved to dismiss on sovereign immunity grounds. The 10th Circuit bankruptcy appellate panel held that (1) a contested matter brought by a debtor to avoid a state court judgment lien on exemption impairment was a “suit” barred by the Tribe’s sovereign immunity and (2) the Tribe’s waiver of immunity from suit in state court by commencing and obtaining judgment against a Chapter 7 debtor in that form was not a waiver of its immunity from suit in federal court.

In *United States v. City of Tacoma*, 332 F.3d 574 (9th Cir. 2003), United States, on behalf of the Skokomish Indian Tribe, sued to set aside a condemnation of tribal land. In 1920, Tacoma instituted proceedings in state court to condemn certain tribal lands in order to build a hydroelectric power project. The federal government was not a party to the state condemnation proceedings. In 1998, the District Court granted summary judgment to the United States, holding that the condemnation proceedings were void because they were brought in state court and did not include the United States as a party. On appeal, the 9th Circuit Court of Appeals held that (1) the United States met the standing requirements of *Lugan v. Defenders of*

Wildlife, (2) the condemnation proceedings of 1920 violated 25 U.S.C. § 357, which requires that the United States be a party to any condemnation proceeding relating to Indian lands, and (3) the defense of equitable estoppel is not available against the United States where the United States acts as trustee for an Indian tribe.

In *Skokomish Indian Tribe, et al. v. United States, et al.*, 332 F.3d 551 (9th Cir. 2003), the Skokomish Tribe brought an action alleging that the City of Tacoma’s development of federally-licensed hydroelectric power violated the Tribe’s rights under an 1855 Treaty, the Federal Power Act (“FPA”) and state law. The 9th Circuit Court of Appeals held that (1) the United States Court not be held liable for damages caused by projects licensed under the FPA, (2) the Tribe’s claims, all of which arose from the grant of a valid federal license, were barred, (3) only the Court of Appeals had jurisdiction to hear challenges to licensing decisions, and (4) the Tribe’s claims against the state based on state law were barred by the statute of limitations.

In *Frank v. Forest County*, 336 F.3d 570 (7th Cir. 2003), the Forest County Potawatomi Community alleged that Forest County’s plan for redistricting its 21 supervisory districts deprived Indians of equal protection and violated the Voting Rights Act. The Court of Appeals held that (1) deviations in sizes of districts did not violate equal protection and (2) the plan did not violate the Voting Rights Act by depriving Native Americans and African Americans of the chance to elect some officials of their choice.

In *Thompson v. Cherokee Nation*, 334 F.3d 1075 (Fed. Cir. 2003), tribes sued to recover indirect contract support costs allegedly owed by the federal government under Indian Self-Determination Act contracts. The Federal Circuit held that the United States was liable for the unpaid support costs. Since the decision conflicts with the conclusion reached recently by the 10th Circuit Court of Appeals in *Cherokee Nation and Shoshone Paiute Tribes v. Thompson*, this case is a

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Selected Court Decisions

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candidate for Supreme Court review.

In *United States v. Braren*, 338 F.3d 971 (9th Cir. 2003), the United States and Indian tribes sued in federal court to obtain clarification of tribal water rights after Oregon announced a preliminary assessment in its administrative adjudication. The 9th Circuit Court of Appeals held that a declaratory judgment action by the United States and tribes, while constitutionally ripe for decision, did not meet the standard for prudential ripeness because the state administrative procedures were preliminary and no final administration action had been taken.

In *United States v. Pyramid Lake Paiute Tribe of Indians*, 2003 W.L. 21976617 (9th Cir. 2003), the Paiute Tribe of the United States sued to overturn the Nevada State Engineer's granting of applications by landowners to transfer water rights between different parcels of their property. The Ninth Circuit Court of Appeals held that (1) the owners were not entitled to a blanket exemption from operation of Nevada's forfeiture and abandonment laws, (2) the evidence supported a finding that some owners had not abandoned or forfeited their water rights and (3) water rights attached to parcels through which irrigation ditches passed only to the extent water was applied to produce crops.

In *United States v. Bird*, 2003 W.L. 22072088 (9th Cir. 2003), the 9th Circuit Court of Appeals held that federal court criminal jurisdiction under the Major Crimes Act, 18 U.S.C. § 1153, confers federal jurisdiction over crimes committed by Indians within Indian country, without regard to the race or tribal membership of the victims.

In *Davis v. United States*, 2003 W.L. 22093915 (10th Cir. 2003), members of the Seminole Nation who are of African descent sued the Department of the Interior, alleging improper denial of certificates of degree of Indian blood ("CDIB") resulting in the plaintiff's inability to share in benefits received by other members of the Seminole Tribe. In issuing CDIBs, the

Bureau of Indian Affairs distinguished between persons descended from an ancestor on the "Seminole Blood Roll" from those on the Freedman Roll, both created by the Dawes Commission in 1906, and denied CDIBs to persons relying entirely on the Freedman Roll who could not also show descent from a person with Indian blood. The plaintiffs also challenged the Seminole Tribes' distribution policy relating to judgment funds. The 10th Circuit Court of Appeals held that (1) the plaintiffs' claims challenging denial of CDIBs was properly dismissed for lack of subject matter jurisdiction because the plaintiffs failed to exhaust administrative remedies and (2) the plaintiffs' claims challenging the distribution fund policy were properly dismissed because the Tribe was an indispensable party and could not be joined because of its sovereign immunity.

In *Reservation Telephone Cooperative v. Henry*, 2003 W.L. 22015786 (D.N.D. 2003), Telephone Cooperative challenged the authority of tribes to impose a possessory interest tax on telephone lines and rights-of-way within the reservation. The District Court held that the tribes lacked authority to impose the tax. Applying the rule of *Montana v. United States*, the court held that the telephone cooperatives had not entered into a consensual relationship with the tribes that would support the tribe's regulatory jurisdiction. Invoking the Supreme Court's 2001 decision in *Nevada v. Hicks*, the court held that trust status of the land is irrelevant. Finally, the court found that protection of the health and welfare of the tribe did not justify the tax.

In *Tenney v. Iowa Tribe of Kansas*, 2003 W.L. 22000592 (D. Kansas 2003), a member of the Iowa Tribe of Kansas and Nebraska had asserted various claims under the Indian Civil Rights Act ("ICRA"), Indian Gaming Regulatory Act, and Title VII of the Civil Rights Act of 1964 after she was terminated from her employment as a gaming inspector at the tribe's casino. The court held that it was without jurisdiction and declined to exercise jurisdiction under the Tenth Circuit Court of Appeals in *Dry Creek Lodge* exception to federal court

abstention in ICRA cases.

In *Artichoke Joe's California Grand Casino v. Norton*, 2003 W.L. 21995180 (E.D. Cal. 2003), cardrooms and charities brought suit to enjoin the Secretary of the Interior from taking land into trust for an Indian rancheria. The District Court held that (1) the plaintiffs lack standing to assert Tenth Amendment rights or claims under the "Enclaves Clause," (2) executive decisions on tribal status are subject to judicial review under the arbitrary and capricious standard, (3) the six-year statute of limitations on actions challenging the federal government's decision to recognize an Indian rancheria as a tribe did not begin to run until the decision had an effect on the challenger and (4) cardrooms and charities would not suffer irreparable harm if the Secretary of the Interior took parcels into trust for an Indian rancheria for Class 2 gaming purposes and plaintiffs were not likely to prevail on their challenge to the federal government's recognition of the rancheria.

In *Dumarce v. Norton*, 2003 W.L. 21981993 (D.S.D. 2003), heirs to allotted lands sought declaratory and injunctive relief challenging a provision of the Sisseton-Wahpeton Sioux Act of 1984 mandating that certain interests in allotments escheat to the United States to be held in trust for a tribe. The court held that the statute violated the Fifth Amendment prohibition on takings and the heirs' claims were not barred by any statute of limitations.

In *Prairie Band of Potawatomi Indians v. Wagnon*, 2003 W.L. 21920915 (D. Kan. 2003), the tribe sued Kansas officials seeking an order requiring the state to recognize motor registrations and titles issued by the Band. The district court held that (1) the tribe could bring the action, despite the state's immunity from suit, under the *Ex Parte Young* exception to the Eleventh Amendment, (2) requiring state officials to recognize motor vehicle registrations and titles issued by the tribe did not violate the Tenth Amendment, and (3) Kansas' motor vehicle registration and titling laws were preempted as applied to vehicles registered and titled by the tribe.

In *Wide Ruins Community School v.*

Stago, _____ F. Supp. 2d _____ (D. Ariz. 2003), an employee of the Wide Ruins Community School sued after she was denied a promotion. The district court held that BIA schools, like Wide Ruins, that are divested of BIA control, under the Tribally-Controlled Schools Act of 1999, become subject to tribal law, including tribal preference laws.

In *Burdette v. Harrah's Kansas Casino Corp.*, 260 F. Supp. 2d 1109 (D. Kan. 2003), the wife of a customer of a tribal casino sued the Tribe, the Tribe's agent operating the casino and companies performing debt collection services for the tribe. The District Court held that (1) it lacked jurisdiction under the Indian Gaming Regulatory Act, and (2) it lacked jurisdiction under the Racketeer Influenced and Corrupt Organizations Act.

In *Tunica-Biloxi Indians of Louisiana, et al. v. Pecot, et al.*, 248 F. Supp. 2d 576 (W.D. La. 2003), the Tribe sued subcontractors and their insurers in state and tribal courts after discovering mold contamination in a hotel addition to the tribe's casino. After defendants sought to remove the case to federal court, the court held that the court would abstain pending exhaustion of tribal court remedies.

In *Shenandoah v. Halbritter*, 2003 W.L. 21856038 (N.D.N.Y. 2003), the plaintiffs sued after the Oneida Nation of New York passed an ordinance requiring inspection of certain homes and demolition of homes found to be incapable of rehabilitation. The ordinance required that alternative housing be found for residents whose homes were demolished. The plaintiffs alleged that the ordinance was passed in order to forcibly remove them from their homes in violation of the Indian Civil Rights Act. The district court held that (1) habeas corpus relief under the Indian Civil Rights Act is available only where the tribal government action imposes a severe actual or potential restraint on liberty, (2) the tribe's housing ordinance was not a bill of attainder or ex post facto law, (3) the court had no jurisdiction to entertain claims under the Indian Civil Rights Act, and (4) the defendants enjoyed sovereign immunity for actions taken in furtherance of official tribal business.

In *Santa Ynez Band of Mission Indians v. Torres*, 262 F. Supp. 1038 (C.D. Cal. 2003), Torres, a construction contractor, had been banned by the tribe by formal resolution. The tribe sued for an order requiring Torres' removal. The district court held (1) suits seeking enforcement of tribal ordinance against nonmembers raise a federal question for purposes of 28 U.S.C. § 1362 where there is a question regarding the tribe's power to enact the ordinance, (2) the Indian Civil Rights Act ("ICRA"), including protection of the right to be free from the deprivation of liberty or property without due process of law, and the prohibition on bills of attainder, constitute a limitation on tribes' power to exclude, (3) while federal courts cannot entertain suits brought against tribes under the ICRA, the court can consider a defense to a suit based on the ICRA, (4) exhaustion of tribal remedies is not required because the tribe brought the suit in federal court and (5) tribes cannot circumvent ICRA due process requirements by passing resolutions or ordinances since such resolutions or ordinances amount to an unlawful bill of attainder.

In *Wendt v. Smith*, 2003 W.L. 21750840 (C.D. Cal. 2003), non-Indians inhabiting a portion of the Chemehuevi Reservation refused to enter into a lease with the tribe for their lands. After orders of eviction were entered by the tribal court, they sued in federal district court, challenging the tribe's legal rights to the land. The district court dismissed, holding that (1) the tribe and tribal officials were immune from suit, (2) the plaintiffs' action were barred by the Quiet Title Act because the United States is immune from suit under the Act when its interest is based on properties, status as trust or restricted Indian lands and (3) the tribe did not waive its immunity by simply acknowledging the plaintiffs' suit in federal court.

In *County of Mille Lacs v. Benjamin*, 262 F. Supp. 2d 990 (D. Minn. 2003), the county and an intervenor bank sought a declaratory judgment that the reservation of the Mille Lacs Tribe had been diminished. The court dismissed, holding that (1) the county and bank both lacked

standing and (2) the case was not ripe for adjudication because the tribe had not threatened to exercise jurisdiction outside of tribal trust lands. The bank claimed standing based on enactment by the tribe of ordinances applicable to entities within its jurisdiction, including regulations relating to licensure, debtor/creditor relations, environmental protection, waste disposal, and tribal court jurisdiction. The court found that, notwithstanding the broad jurisdictional claim, the tribe had taken no concrete steps to enforce its ordinances beyond its 4,000-acre trust lands. Similarly, the court refused to acknowledge the standing of the county based on the county's asserted need for clarification of its jurisdictional authority over the disputed territory. The tribe and its members had, in fact, complied with county regulations, although under protest.

In *Vencel v. Bug-O-Nay-Ge-Shig*, 262 F. Supp. 2d 1001 (D. Minn. 2003), Vencel filed a federal sexual harassment claim against a tribal school, Bug-O-Nay-Ge-Shig, pursuant to Title VII of the 1964 Civil Rights Act. The school, owned and operated by the Leech Lake Band of Ojibwe, receives a portion of its funding from the BIA. Notwithstanding the school's web page stating that it was operated by the BIA under the direction of the Office of Indian Education Programs, the court found that, at least since 1998, the school is owned and operated by the tribe. Jurisdiction over the plaintiff's claims, the court held, lies in tribal court.

In *Equal Employment Opportunity Commission v. Peabody Coal Company*, 214 FRD 549 (D. Ariz. 2002), the Equal Employment Opportunity Commission ("EEOC") filed a complaint against Peabody under Title VII of the 1964 Civil Rights Act, claiming that it engaged in prohibited national origin discrimination by giving preference to members of the Navajo Tribe over members of other tribes. The district court held that (1) Title VII did not give EEOC authority to sue a tribe when it was not an employer but merely a party to a lease with Peabody that required preferences for tribal members, (2) the Navajo Nation was a necessary and

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indispensable party that could not be joined and (3) the lawsuit must be dismissed because it presented a nonjusticiable political question.

In *Buckles v. IHS*, 2003 W.L. 21459545 (D.N.D. 2003), former employees of the Indian Health Service (“IHS”) sued the IHS and current employees alleging that the defendants improperly disclosed confidential medical records. The district court held that (1) neither the Privacy Act nor the Freedom of Information Act (“FOIA”) allows suits against individual defendants, and (2) any tort claims against the individuals would be deemed claims against the United States under the Federal Tort Claims Act.

In *Russell v. Fort McDowell Yavapai Nation*, 293 B.R. 34 (D. Ariz. 2003), a member of the Fort McDowell Yavapai Tribe filed an adversary complaint against the tribe in Bankruptcy Court seeking to prevent the tribe from collecting his debt by withholding his monthly per capita distribution. The tribe moved to dismiss based on its sovereign immunity but the court denied the motion, holding that sovereign immunity is abrogated under the Bankruptcy Code.

In *State v. Norton, et al.*, 2003 W.L. 21664277 (D. Or. 2003), the Secretary of the Interior had taken land into trust for the Confederated Tribes of the Coos, Lower Umpqua and Ciuslaw Indians (“Tribe”) and designated the lands as “taken into trust as part of . . . the restoration of lands for an Indian tribe that is restored to recognition” for purposes of the Indian Gaming Regulatory Act (“IGRA”). The “restored” designation permitted the Tribe to engage in gaming on the land without the approval of the state governor. The state sued to reverse the designation. The district court held that (1) the IGRA contained no restriction on the Secretary’s authority to interpret the “restored lands” exception, (2) the Secretary’s interpretation of the IGRA “restored lands” exception was reasonable.

In *Hoevenaar v. Lazaroff*, 2003 W.L.

21910704 (S.D. Ohio 2003), a Native American prison inmate sued under the Civil Rights Act of 1871 (42 U.S.C. § 1983) and the Religious Land Use and Institutionalized Persons Act (“RLUIPA”) (42 U.S.C. § 2000cc-1) seeking an injunction to prevent prison officials from requiring him to cut his hair. The district court held that (1) for purposes of the RLUIPA, the state met its burden of showing that its grooming regulations served a compelling state interest sufficient to outweigh the plaintiff’s religious interest in wearing his hair long, (2) the prison would be required to make a reasonable accommodation to the plaintiff’s religious beliefs by permitting him to grow a “kouplock.”

In *Wilson v. Moore*, 2003 W.L. 21544244 (N.D. Fla. 2003), a Native American prisoner brought a civil rights action challenging various restrictions on religious practices. The district court held (1) prison policies denying native prisoners “holy ground” restricting smudging ceremonies, and denying possession of prayer pipes did not violate prisoners’ religious rights and (2) factual issue remained whether policy denying native prisoners’ right to wear headbands violated their rights under the Equal Protection and Free Exercise Clauses of the Constitution.

In *Teague v. Bad River Chippewa Tribe*, 665 N.W.2d 899 (Wis. 2003), a nontribal member sued the tribe in state court for breach of an employment contract. The Tribe sued in tribal court. The employee ignored the tribal court action and received a state court judgment in his favor after issuance of the tribal court judgment in the tribe’s favor. A majority of the court held that (1) Wisconsin’s statute requiring that state courts accord full faith and credit to tribal court judgment on a reciprocal basis does not apply at the point when two actions based on the same subject matter are proceeding simultaneously in state and tribal courts, (2) principles of comity, based on evaluation of various factors, must determine which court proceeds to judgment, (3) application of the relevant factors, including recognition of the tribe’s right of self-government, mandated that the state court cede jurisdiction to the

tribal court and, therefore, the tribal court judgment was entitled to full faith and credit by the state court.

In *Koke v. Little Shell Tribe of Chippewa Indians of Montana, Inc.*, 2003 W.L. 1983746, 2003 Mt. 121 (Mont. 2003), various candidates for leadership positions in a tribe seeking federal recognition sued incumbent candidates seeking tort damages and injunctive relief relating to election. The Montana Supreme Court held that (1) the corporation was a “tribe” under the common law, (2) the tribe’s incorporation of a cultural corporation did not preclude recognition of its sovereignty and (3) the action against tribal officials was barred by sovereign immunity.

In *State v. Spotted Eagle*, 71 P.3d 1239 (Mont. 2003), the Montana Supreme Court held that the defendants’ uncounseled tribal convictions for driving while intoxicated could be used to enhance state DWI charges.

In *re Commitment of Burgess*, 2003 WI 71, 262 Wis. 2d 354, 665 N.W.2d 124, the Wisconsin Supreme Court held that the state’s criminal jurisdiction over Indians in Indian country conferred under Public Law 83-280 supported state circuit court jurisdiction in Chapter 980 proceedings to commit a tribal member as a “sexually violent person.” The conduct prohibited by Chapter 980 fell within the state’s criminal prohibitory authority rather than its civil regulatory authority.

In *State v. Olney*, 72 P.3d 235 (Wash. App. 2003), a Washington Appellate Court held that state laws criminalizing possession of a loaded rifle in a motor vehicle could be enforced against Native Americans, notwithstanding their treaty-reserved hunting rights.

In *Hill v. Eppolito*, 2003 W.L. 21704423 (N.Y. Sup. 2003), a New York state court dismissed a sexual harassment claim against a member of the Oneida Nation of New York after a tribal court judgment had been entered against him based on the same conduct. Notwithstanding the tribe’s status as a separate sovereign, New York’s expansive double jeopardy statute offers criminal defendants more protection than the “dual sovereign” doctrine could

otherwise provide.

In *Saratoga County Chamber of Commerce, et al. v. Pataki*, 2003 W.L. 21357342 (N.Y. 2003), the plaintiffs challenged the authority of the governor of New York to enter into compacts with Indian tribes without the approval of the New York state legislature in the absence of any statutory delegation of authority by the legislature. New York's highest court held that (1) separation of powers requires that the legislature make critical policy decisions while the executive branch's responsibility is to implement those policies, (2) the compacting process involves policy choices that are within the legislative sphere, and (3) the court would not address the compatibility of the compacts with an anti-gambling provision in the state constitution, leaving the development of the analysis on that issue to the lower courts.

In *Schaghticoke Tribal Nation v. Harrison*, 264 Conn. 829 (2003), a faction of an Indian group seeking federal recognition brought a trespass action against a reservation resident in connection with removal of timber from the reservation. The resident moved to dismiss for lack of standing and the faction to which the resident belonged moved to intervene. The Connecticut Supreme Court held that (1) the plaintiff was entitled to an evidentiary hearing on the issue of standing, (2) a decision by the BIA with respect to the plaintiff's petition for federal recognition was not required in order for the court to rule on the motion and (3) the other faction's motion to intervene should have been granted.

In *Aasen-Robles v. Lac Courte Oreilles Band*, 2003 WI App 224, 03-1143-FT (Ct.App. 2003), the plaintiff, a tribal employee, sued the Tribe and its insurer after she sustained injuries resulting from a slip and fall on the Tribe's premises, on her way to work at the tribal casino. The tribe maintained public liability insurance as required by its Class III gaming compact with the State, and provided worker's compensation coverage for its employees under a self-insured plan administered by Corporate Benefit Services of America ("CBSA"). CBSA denied plaintiff's claim

under the worker's compensation policy on the grounds that, at the time of the injury, she had not yet reported for work and the injury was, therefore, not work-related. The Tribe's general liability insurance carrier denied her claim on the grounds that the general liability insurance related only to Class III gaming activities and excluded injuries to tribal employees. The Wisconsin Court of Appeals held that (1) the plaintiff's injuries were covered by the express terms of the general liability policy and the compact provisions had no limiting effect on coverage and (2) the tribal employee exclusion under the general liability policy related only to injury to an employee "arising out of and in the course of his or her . . . employment" and was, therefore, inapplicable. The court rejected the carrier's reliance on Wisconsin case law extending worker's compensation coverage to injuries sustained by employees traveling to and from their place of employment, noting that the Tribe is not

subject to Wisconsin's worker's compensation system.

In *State v. Manypenny*, 662 N.W.2d 183 (Minn. App. 2003), a member of the White Earth Chippewa Tribe assaulted a tribal officer and was charged and convicted by the State of Minnesota, pursuant to a state law criminalizing physical assault on a licensed "peace officer." The tribe had entered into a cooperative agreement with the state providing concurrent jurisdiction to enforce the state's criminal laws within the reservation. The defendant challenged her conviction on the grounds that Public Law 280 conferred criminal jurisdiction exclusively to the State of Minnesota. The Appellate Court upheld the conviction, holding that (1) formal retrocession of PL 280 jurisdiction was not required in order to enter into a cooperative agreement and (2) the court would not entertain the defendant's argument that the cooperative agreement violated tribal law. ■

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