ANISHINABE LEGAL SERVICES

Anishinabe Legal Services Newsletter

Serving the Leech Lake, Red Lake, & White Earth Reservations

Cass Lake, Minnesota • December 2017

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From the Director: Staffing and Programming

Cody Nelson
Executive Director

Greetings friends! 2017 has been a very busy year for ALS staff and board, and we are pleased to share updates with our community members and stakeholders.

In June 2017, ALS celebrated our 50th year of service. Minnesota Supreme Court Justice Anne McKeig gave an inspiriting keynote address. We are thankful for all our supporters who came out to celebrate with us, and very grateful to all who generously contributed financial support to help us put on this celebratory event, including:

- Bemidji Chrysler Center
- Blandin Foundation
- Bob Lowth Ford
- First National Bank of Walker
- Leech Lake Tribal Court
- Mille Lacs Band of Ojibwe
- Minnesota State Bar Association Foundation
- Pepsi/NEI Bottling of Bemidji
- Red Lake Band of Chippewa Indians
- TEALS Supervalu
- Walmart
- Western Bank of Cass Lake
- White Earth Shooting Star Mii-gii-way-win Advisory Board

ALS has also been busy collecting surveys from community members and stakeholders for our comprehensive needs assessment. Throughout this process, ALS has distributed hundreds of electronic and paper surveys, and has held focus groups with community members on all 3 Reservations. This data will be assembled and utilized by our Board of Directors to set case-type priorities for 2018 and beyond. Many thanks to the Tiwahe foundation, whose generous donation allowed us to hold focus groups for the first time as part of our community needs assessment process.

ALS would also like to thank the Otto Bremer Trust for funding a new project at ALS commencing in fall 2017. For this project, ALS will create self-help legal materials geared towards the Leech Lake, White Earth, and Red Lake Tribal Courts.

This newsletter is made possible thanks to a generous donation from the Minnesota Chapter of the Federal Bar Association. Thank you!!

New Staff

ALS welcomes new staff attorney Taylor Burdick! Joining ALS this past August, Taylor is a 2017 graduate of the Oklahoma City University School of Law. He was the Vice President of the National Native American Students Association (NNALSA) and Administrator of the 2017 NNALSA Moot Court Competition. Taylor is an enrolled member of the Muskogee Nation and hails from Northern Minnesota. In 2016, he clerked for the Leech Lake Tribal Court. In his spare time, Taylor volunteers to help local students pursue their legal careers.

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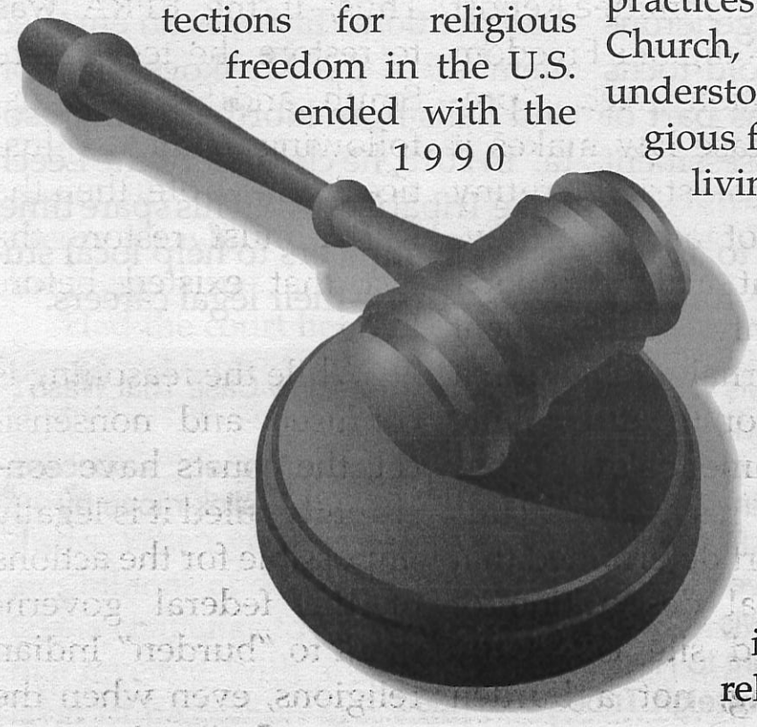
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Confused Interpretations Leave Sacred Sites without Legal Protections

Todd Allin Morman
Staff Attorney

The Standing Rock Sioux have had limited success in their struggles to protect the sacred waters of Lake Oahe, and one legal argument that has failed them, as it has every Indian nation, is that desecrating places of religious significance to Indian peoples unduly burdens their religious freedom and is thus a violation of law. Religious freedom jurisprudence has become confused and incoherent in recent decades with regards to indigenous sacred sites. The outcome has been clear and consistent: the *law will not* protect Indian sacred sites. There is a right to substantive consultation, but federal administrators, such as the Army Corps of Engineers, have the authority to ignore Indian concerns and make whatever decision they will, so long as consultation took place.

Few discuss the fact that substantive constitutional protections for religious freedom in the U.S. ended with the 1990 Supreme Court decision in Employment Division v. Smith, but any hope of constitutional protections for sacred sites on religious freedom grounds ended the year before with Lyng v. Northwest Indian Cemetery Protective Association.[1] In Lyng Justice Sandra Day O'Connor wrote, the federal government, as property owner, could do whatever it wanted to with the land it owned, regardless of the impact on Indian sacred sites, even if the action made it impossible to practice the impacted religion. In Smith, Justice Scalia abandoned the long held "compelling interest test" for protection of religious freedom and declared that any law that did not set out to outlaw religion as such, applied across the board. Up to that point, when a religion was impacted by a general law, the government needed to show it had a compelling interest to restrict religious freedom. While the Smith case originated with the practices of the Native American Church, many across the country understood this assault on religious freedom would impact all living in the United States.



For its part, Congress acted to protect religious freedom in the United States with the Religious Freedom Restoration Act of 1993 (RFRA). This law restored and expanded the compelling interest test, applying it in all cases where religion was burdened. A three part test was created. First, was religion burdened? If so, does the law or action further a compelling governmental interest? If so, then one needs to finally ask: was the compelling interest carried out in the least restrictive means possible? The law clearly was meant to undo much of the damage done to religious freedom by the Smith decision, but the question remained, did the RFRA undo the damage done by Lyng?

Navajo Nation v. Forest Service was the first test of the limits of the Religious Freedom Restoration Act as it applied to Indian sacred sites.[2] In 2005 the Forest Service approved the expansion of the Arizona Snowbowl Resort to include artificial snowmaking with reclaimed sewage water on the San Francisco Peaks, a place sacred to thirteen Indian peoples. The Indian plaintiffs, with the Navajo and Hopi nations taking the lead in litigation, argued that spraying reclaimed sewage water on their sacred places would substantially burden their religions. The Ninth Circuit Court of Appeals initially agreed in 2007, finding their religions were burdened, and there was no compelling interest in the government protecting the profits of a ski resort in a desert.[3]

In a rare, but not unheard of move, the full Ninth Circuit Court of Appeals reheard the case and overturned the previous decision, finding, in a deeply confused opinion, that "burden" was a term of

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art and the Lyng decision had shown that Indian religions are not "burdened" by desecration and destruction of sacred sites (though Lyng never used "burden"). The full Ninth Circuit Court opined that desecrating sacred sites did not "burden" religions, but merely "decreases the spirituality, the fervor, or the satisfaction" of the complaining Indians.[1]

Most problematic in the reasoning of the majority was their reliance on an interpretation of Lyng that was at odds with both the interpretations of Justices Scalia and O'Connor. In Smith, Justices Scalia and O'Connor disagreed over the reasoning in Lyng. Scalia, in the majority opinion of Smith, stated that "we declined to apply Sherbert analysis [compelling interest test] to the Government's logging and road construction activities on lands used for religious purposes by several Native American Tribes [in Lyng], even though it was undisputed that the activities could have devastating effects on traditional religious practices."[2] Implicit in this interpretation of Lyng is the notion the Indian religions would in some way be burdened by the destruction of sacred sites (for if the free exercise of religion was not in any way infringed, the court would not be abandoning the compelling interest test).

Justice O'Connor disputed Justice Scalia's interpretation of her opinion in Lyng, but her interpretation also contains an implicit burden on religion of Indian practitioners. Justice O'Connor insisted that the compelling interest test did not apply to how the government used or disposed of government land, as an exception to the compelling interest test. The government as property owner could do whatever it liked with its property.[3] Thus for neither Justices Scalia nor O'Connor did Lyng stand for the proposition that land use that harms Indian religious practices can never be a burden on religion. To the contrary, implicit in their reasoning was the view that Indian religion was burdened by the proposed road in Lyng.



In the struggle against the Dakota Access Pipeline, the Standing Rock Sioux took the position that the presence of the oil pipeline underneath the sacred waters of Lake Oahe was a fulfillment of a prophecy that the lands of the Lakota would be destroyed by a great black snake. They argued the decision of the Army Corps to issue the permit for the pipeline beneath the sacred lake burdened their religion in violation of the RFRA.[4] The trial court followed the precedent set by the Ninth Circuit, but offered a more coherent opinion, even if the reasoning does not address the understanding of Lyng offered by Scalia and O'Connor.

The court quoted the Senate Committee Report on the Religious Freedom Restoration Act: "pre-Smith case law makes it clear that strict scrutiny does not apply to government actions involving only management of internal Government affairs or the use of the Government's own property or resources." Thus the court determined that the total desecration of a sacred site is, legally speaking, not a burden on religion.[5] Though, the specific language of the statute and either meaning of Lyng do not support this reasoning. Justice O'Connor claimed land use was an exception to the compelling interest test. The RFRA was to apply in "all" cases, ending such exceptions to the use of the test. In addition, Justice Scalia argued, in Smith, that the compelling interest test had been abandoned, not by Smith, but by Lyng. Thus, if the RFRA was to restore the test before Smith, and Smith is just following Lyng, as Justice Scalia wrote, then the RFRA must restore the test that existed before Lyng.

While the reasoning is confused and nonsensical, the courts have consistently ruled it is legally impossible for the actions of the federal government to "burden" Indian religions, even when the

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destruction of sacred sites makes the practice of religion impossible.

1 Lyng v. Northwest Indian Cemetery Protective Association, 485 U.S. 439 (1989), Employment Division v. Smith, 494 U.S. 872 (1990).
2 535 F.3d 1058 (9th Cir. 2008)
3 Navajo Nation, 479 F.3d 1024 (9th Cir. 2007), 1044-45.
4 Navajo Nation, 535 F.3d 1063.
5 Lying, 485 U.S. 451.
6 Smith, 494 U.S. 900.
7 Standing Rock Sioux v. Army Corps of Engineers, 239 F.Supp.3d 77 (2017), 89-90.
8 S. Rep. No. 103–111 at 8–9 (1993) as quoted by 239 F.Supp.3d 93.

Right to Rice: In Defense of the Inherent Rights of Anishinabe People

Taylor L. R. Burdick
Staff Attorney

The right to live off of the land by hunting, fishing, and gathering has existed with the Anishinabe people since time immemorial. The introduction of Europeans and the founding of a new country or state cannot change that.

Hunting, fishing, and gathering (so-called usufructuary rights) are essential to the continued existence of Anishinabe people. From a cultural standpoint, these activities are of vital importance. Of those activities, the harvesting of wild rice may be the most culturally significant. Ricing is a culturally identifying activity. It helps to connect people to their spiritual world; it helps to facilitate the education and passing on of knowledge from one generation to the next; and it helps to provide a better understanding and respect for the natural world.

Moreover, from a subsistence and survival standpoint, these activities provide essential food resources. As one Buzz Feed News article recently pointed out, the idea of food sovereignty is becoming increasingly vital to the health of Northern Minnesota tribes.[1] According to that article, wild rice is of vital importance to being able to feed the nearly 5,000 tribal members living on the Red Lake Nation reservation. The importance of wild rice is no different for any of the other Minnesota tribes, either.

Many reservation communities lack convenient and affordable commercial food resources. Often, the community lacks any grocery store at all, forcing people to drive dozens of miles just to get to the nearest location. And when there is a grocery store relatively close by, it's often overpriced and filled with chemically processed, unhealthy products. Usufructuary rights, therefore, become an essential element to providing affordable, dependable, and healthy food to tribal communities.

Legally, however, the inherent "right to rice" has become buried under a mountain of contradictory, ambiguous, and often times genocidal laws dating back to the signing of treaties in the 1800s. The Minnesota Chippewa treaties were signed between 1837 and 1889. The U.S. government used coercive, threatening, and intimidating tactics to get the Anishinabe leaders to sign onto documents in a language they did not fully understand, and in economic terms with which their society had never agreed. These treaties were designed to deprive the Native American people of their homelands for pennies on the dollar, and with little to no legal recourse.

Because of the one-sided nature of these documents, the Federal courts have developed a rule for interpreting them: the "Indian canon" of interpretation says that treaties need to be read as the Indians would have understood it at the time it was signed. Modern courts have used this "Indian canon" to declare that, unless Congress explicitly states that rights to hunt, fish, or gather have been taken away, that the inherent rights to these activities continue – despite any potential state law or ambiguous treaty language to the contrary. The landmark case of Mille Lacs Band of Chippewa Indians v. State of Minnesota said as much in 1997. The federal court there stated that the "mere establishment of a reservation does not automatically extinguish rights to lands outside the reservation." The case also points out that the 1855 treaty never

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Lewis v. Clarke: The Tribal Sovereignty Case That Wasn't

Phillip Dehoux and Jerome Song

Phillip Dehoux is an Attorney and Constitutional Law Scholar based out of Virginia and Maryland who specializes in Cyber Security and Privacy issues. Jerome Song is a Staff Attorney

Introduction

The Supreme Court recently ruled in Lewis v Clarke that the doctrine of tribal sovereign immunity does not bar individual-capacity damages against tribal employees for torts committed within the scope of their employment, even when the tribe has agreed to indemnify the employee.[1]

Background

The case stems from an October 2011 car accident on Interstate 95 in Norwalk, Connecticut. Brian and Michelle Lewis were driving southbound on I95 when William Clarke, a Mohegan Tribal Gaming Authority (MGTA) limousine driver, crashed into them while transporting Mohegan Sun Casino patrons in a tribe-owned vehicle. The Lewises filed suit against Clarke in the Connecticut Superior Court claiming their injuries were a result of Clarke's negligent and careless driving. Clarke motioned to dismiss the suit and argued that as he was driving a limousine as a MGTA employee the trial court lacked subject matter jurisdiction and, because of a tribal indemnification clause extending immunity protection to employees, tribal sovereign immunity applied. The trial court denied the motion because the doctrine of tribal sovereign immunity did not apply where the Lewises sought damages from Clarke personally and not the tribe. The Connecticut Supreme Court, however, reversed the lower court and held that tribal sovereign immunity did indeed extend to Clarke because he was a member of the tribe acting within his scope of employment as a MGTA driver.

Historical Overview of Tribal Sovereign Immunity

The doctrine of sovereign immunity as applied to Indian tribes, means that governmental immunity protects the tribes from lawsuits to which they do not consent. This is of tremendous importance for several reasons. Tribes decide the conditions under which they can be sued. Sovereignty legitimizes tribal government institutions. And sovereignty directs self-determination that allows tribes to grow, improve their communities, and spur economic development.[2] The Supreme Court first recognized a degree of sovereignty of the tribes when in 1832 the Court described the Cherokee Nation as a domestic dependent nation within the United States with a relationship analogous to "a ward to his guardian."[3] Nearly 30 years later the Supreme Court used language similar to state sovereign immunity to preclude personal liability against a defendant officer of the Cherokee Nation sued for debts incurred for services during the Trail of Tears event.[4] It would be another four decades until the first recorded decision on tribal immunity in Chadick v. Duncan.[5] Chadick was a breach of contract case in which the plaintiff sought an injunction to compel the Cherokee Nation to deliver bonds he alleged were owed to him.[6] The federal court, relying on earlier cases dismissing suits against tribes based on immunity and state and foreign sovereign immunity jurisprudence, dismissed and concluded that tribes "are not amenable to suit anywhere at the instance of a private individual."[7] Subsequent cases involving suits against tribes barred actions against tribes for damages and actions seeking relief based on settled law and public policy.[8]

Immunity in the Modern Era

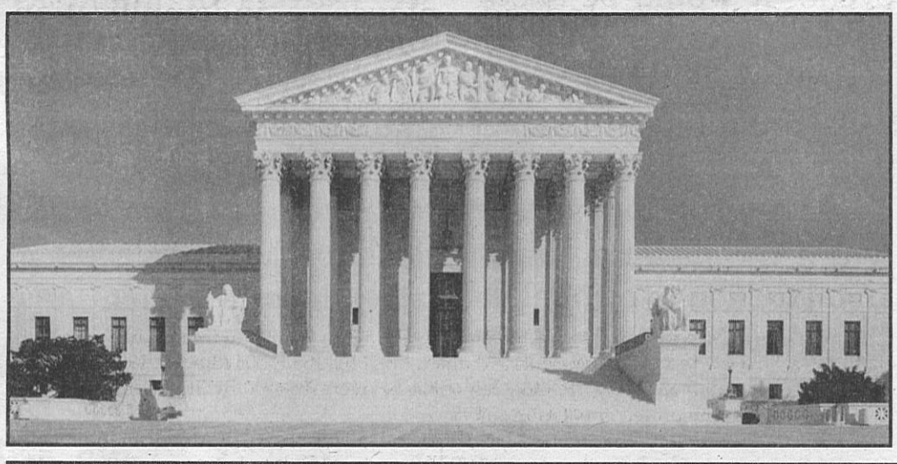
The modern era has seen more suits filed against tribes and continued attacks on the sovereign immunity doctrine. In most cases courts have largely upheld the doctrine and federal policy shifted favorably for tribal sovereignty.[9] The most often attacked kinds of tribal sovereign immunity cases in which plaintiffs want to see waivers of immunity are tort and consumer actions.[10] When waivers are granted, tribes most often opt to have cases heard in tribal courts.[11] This is particularly advantageous to tribes in tort matters arising out of casino-related claims.[12] When cases are heard in non-tribal courts, the courts have usually looked at all facts and circumstances to determine whether a tribal employee defendant, sued individually, was acting within the course of his employment.[13] Specifically, if the employee's actions were conducted in a required or appropriate manner, then a suit may proceed in against him in his official capacity.[14] If not, then the suit should proceed against the employee as an individual.[15]

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Lewis v. Clark

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In addition, suits against employees acting in their official capacities were viewed as suits against a government entity, and this triggers immunity protection.[16] The Ninth Circuit, however, dealt a blow to tribal sovereign immunity in Maxwell v. County of San Diego by using a remedy-focused analysis when it held that tribal employees and officials may be sued in their individual capacities for money damages arising out of actions taken in the course and scope of their employment if the tribe is not named in the suit.[17] Maxwell involved defendant ambulance paramedics, in pertinent part, who were employees of the Viejas Band of Kumeyaay Indians Tribal Fire Department moving for a FRCP 12(b)(1) dismissal for lack of subject matter jurisdiction because they enjoyed tribal sovereign immunity protection in a gross negligence case.[18] The Ninth Circuit agreed with the plaintiffs' argument that the paramedics lacked immunity, but not because the paramedics have been sued as individuals for acts not involving a policy or discretionary function, rather, because any "remedy would operate against [the paramedics], not the tribe."[19] The court's decision essentially provides potential plaintiffs a method to circumvent tribal courts and tribal sovereign immunity, and potentially leaves tribes exposed to more liability. Despite tribes extending indemnification to their employees, plaintiffs now have greater incentive to sue agents of the tribe in their individual capacities, as they are the real party in interest.



Recognizing this, the Lewises opted to sue Clarke in his individual capacity in Connecticut state court rather than tribal court.[20] In the ultimate appeal, the Supreme Court looked to its own precedent even though it made its analysis similar to Maxwell. The Court looked at the distinction between individual- and official-capacity claims to determine the real party in interest, which dictates what immunities may be available.[21] The Supreme Court, similar to Maxwell, reasoned that the guiding principles of official capacity in the context tribal sovereign immunity "foreclose Clarke's sovereign immunity defense[.]"[22] This was a negligence action committed on state lands arising out of a tort a tribal employee acting within the scope of his employment. The suit 1) is not against Clarke in his official capacity, 2) seeks to recover only from Clarke for his personal actions, and 3) any judgment in the case will not operate against the MGTA nor will cause it to take any action or disturb its property.[23]

Although the MGTA provided an indemnification clause to Clarke and cases like Maxwell may have provided a manner to circumvent immunity, the Supreme Court recognized that immunity was never actually in play. The provision extending indemnification does not, as a matter of law, does not make the tribe a real party in interest. Connecticut exercises no jurisdiction over the MGTA

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Sovereign Tribes becoming patent owners: a successful investment for Indian people or a slick move by big Pharma?

Kristofer Jake Womack
Staff Attorney

In September, big pharma company Allergan, a multinational pharmaceutical that produces branded and generic drugs, and performs pharmaceutical research and development, took the unusual step of transferring ownership of a patent to the Saint Regis Mohawk Tribe. In exchange for the transfer of ownership, the Tribe entered into to an exclusive lease with Allergan, allowing Allergan to continue production of a patented eye drop. This lease would generate about $15 million per year in lease payments to the Tribe, with a $13.75 million payment up front. The patent at issue was that of an eye drop called Restasis, which until now has been the company's second best selling drug (Botox being their number 1 seller) bringing in $1.4 billion dollars to Allergan last year alone.

The strategy behind this move was to shield the patent from the USPTO's inter partes review system, and administrative law proceeding. The review case was brought by other generic drug manufacturers as a means to invalidate the patent for Restasis so that these manufacturers could begin producing and selling their own version of the eye drop.

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The Tribe agreed to claim sovereign immunity as a basis for dismissal of the inter partes review case, as there are previous decisions in patent law which find that sovereign immunity alone defeats these types of administrative law procedures. Earlier this year, the University of Florida was granted a dismissal of USPTO claim against them by successfully arguing that as an arm of the state of Florida, the University should be granted sovereign immunity. While this does not completely shield the patent itself from challenge in federal court by the USPTO itself, it does protect the patent holder from the challenges of other manufacturers in inter partes administrative proceedings.

What is a patent? A patent is a right granted to an inventor by the federal government that permits the inventor to exclude others from making, selling or using the invention for a period of time. The patent system is designed to encourage inventions that are unique and useful to society. Congress was given the power to grant patents in the Constitution, and federal statutes and rules govern patents. The U.S. Patent and Trademark Office (USPTO) issues patents for inventions that meet statutory criteria, with there being 3 categories of patents. Utility Patents: The most common type of patent, these are granted to new machines, chemicals, and processes. Design Patents: Granted to protect the unique appearance or design of manufactured objects, such as the surface ornamentation or overall design of the object. Plant Patents: Granted for the invention and asexual reproduction of new and distinct plant varieties, including hybrids In addition to the above criteria, patent has to be novel and non-obvious.

Part of the exchange for patent protection is that the patentee must fully disclose all aspects of the subject of the patent to the USPTO, and after a statutory amount of exclusivity to the inventor/patentee, the information in the patent falls into public domain and may be replicated by

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and any judgment in favor of the Lewises does not bind the Tribe to pay out damages. Because Clarke is being sued in his official capacity, he, and he alone, is responsible for his individual wrongdoing and any resulting remedies sought.[24]

Conclusion

In this new landscape we see tribal employees might not be entirely immune from suits brought against them in their individual capacities for damages in tort actions committed in the course or scope of their employment even when tribes agree to defend and indemnify their employees. Individual-capacity suits do not implicate a sovereign entity, and therefore the sovereign is not a real party in interest. Moreover, indemnification clauses do not alter who the real party in interest is and cannot extend tribal sovereign immunity to conduct that would not normally be covered. Lewis v. Clarke did not resolve some of the more pressing challenges involving the boundaries of tribal sovereign immunity, but it does provide some guidance to tribes in situations where immunity may not cover individual employee actions and whether to re-evaluate the scope of employee indemnification

1 581 U.S. ____ (2017).

2 See Alison Hester, Maxwell, Lewis v. Clarke, and the Trail around Tribal Sovereign Immunity, 88 U. Colo. L. Rev. 721, 764 (2017); Ryan Seelau, In Defense of Tribal Sovereign Immunity: A Pragmatic Look at the Doctrine as a Tool for Strengthening tribal Courts, 90 N.D. L. Rev. 121, 123 (2014).

3 Cherokee Nation v. Georgia, 30 US. (5Pet.) 1, 17 (1831).

4 Parks v. Ross, 52 U.S. (11 How.) 362, 373-74 (1851).

5 No. 15,317 (App. D.C. Mar. 3, 1894).

6 Id. at 73-74.

7 Id. at 78.

8 See Thebo v. Choctaw Tribe of Indians, 66 F. 373 (8th Cir. 1895) (Maintaining a sovereign cannot be sued without its consent); Adams v. Murphy, 165 F. 304 (8th Cir. 1908) (Relying on public policy to protect tribal treasury lest tribes be overwhelmed by litigation that drains its coffers without the protection of immunity).

9 Richard Collins, To Sue and Be Sued: Capacity and Immunity of American Indian Nations, 51 Creighton L. Rev. 2 (forthcoming 2018) University of Colorado Law Legal Studies Research paper No. 17-21, at 15), online at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3044824 (as last visited November 8, 2017).

10 Id. at 22.

11 Id. at 24; See also Ralph W. Johnson & James M. Madden, Sovereign Immunity in Indian Tribal Law, 12 Amer. Ind. L. Rev. 153 (1984)

12 Id.

13 See Hardin v. White Mountain Apache Tribe, 779 F.2d 479 (9th Cir. 1985).

14 See Allison Hester, supra at 724.

15 Id.

16 Id.; See also Kentucky v. Graham, 473 U.S. 159, 166 (1985) ("An official-capacity suit is, in all respects other than name, to be treated as a suit against the entity.").

17 See 708 F.3d 1075, 1087-90 (9th Cir. 2013).

18 Id. at 1081.

19 Id. at 1087.

20 Lewis v. Clarke, supra, at ___ (page 3 of opinion)

21 Id. at ___ (page 7 of opinion)

22 Id. at ___ (page 7)

23 Id. See also Larson v. Domestic and Foreign Commerce Corp., 337 U.S. 682, 687 (1949).

24 Id. at ___ (page 12 of opinion).

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Right to Rice

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even mentions tribal hunting, fishing, or gathering rights. Using the "Indian canon," the Court reasoned that because the treaty made no mention of these rights, there was no reason to believe that the signatories to the document believed their rights were being taken away. It therefore stands to reason that the Minnesota Chippewa people still retain their inherent rights to these activities – which include ricing.

There is currently a case working its way through the Minnesota court system designed to ensure the protection of these rights everywhere in the state. The state of Minnesota wants to subject Minnesota Chippewa Tribal members to state licensing and regulations, in conflict with established federal case law. Anishinabe ricers are challenging the state's attempts at enforcing those regulations on tribal members. The case is currently pending.

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competitors. Restasis eye drops contain cyclosporine which is an immunosuppressant. Cyclosporine can increase tear production that has been reduced by inflammation in the eye, and Restasis eye drops are used to treat chronic dry eye that may be caused by inflammation. Restasis was patented under a Utility Patent, due to it being a chemical composition.

While this story doesn't end particularly well for Allergan, it certainly raises more questions and potential than answers. In October, a federal court found that the patents for Restasis were invalid based on obviousness. Apparently, during the time when Restasis was patented, there were several similar alternatives that Allergan had patents for, and based on those existing patents the court concluded the patent for Restasis was obvious at the time. Of course, this means that the patents for Restasis are invalid and the Saint Regis Mohawk Tribe essentially owns nothing at this point. However, the theory on which this whole exercise is based becomes the bigger issue.

Had the court held that the patents were valid, this would move on to the sovereign immunity issue at some point. Patents are only issued for a 20 year period before they become public domain, but are open to challenge prior to the expiration in the inter partes review procedures. When you're talking about a patent that generates billions of dollars, generic drug makers will gladly take a challenge to the patent in hopes of breaking into that revenue. With sovereign immunity adding an extra layer of protection to a valid patent, and with pharma ...

companies and tribes finding mutually beneficial ways of working together, one could see how this could be game changing for all parties involved.

Could this be a road map to successful partnerships between the sovereign tribes and patent holders? While this will not be the defining case on the matter, it certainly seems to open the door for big corporate patent holders to creatively protect their big money makers and at the same time generate funds for reservations that need those resources for the good of their people.

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