Godfrey & Kahn’s 24th Annual Labor & Employment Law Seminar

Godfrey & Kahn’s Labor, Employment & Immigration Law Practice Group will present its annual Labor and Employment Law Conference in April at three locations throughout the state of Wisconsin. The seminar will include an update on recent changes in federal and state employment law, and a discussion of best practices and practical approaches to managing employment law problems. All conferences run from 8:30 a.m. to noon. Locations and dates are:

- Thursday, April 11 - Madison (Monona Terrace)
- Wednesday, April 17 - Green Bay (Lambeau Field Atrium)
- Wednesday, April 24 - Milwaukee (InterContinental Hotel)

The seminar, which is offered free of charge, is designed to serve the needs of executives, in-house counsel, human resource professionals and front-line supervisors. Godfrey & Kahn has applied for 3 recertification credit hours toward PHR, SPHR and GPHR recertification through the Human Resource Certification Institute (HRCI) and has also applied for 3 hours of Wisconsin mandatory CLE credits from the Board of Bar Examiners.

To register or for more information, please contact Jessica Gordon, Events Coordinator, at 414.287.9311 or jgordon@gklaw.com.

Godfrey & Kahn’s Tribal Employment Law Practice

Godfrey & Kahn has experience in all areas of labor and employment law and has assisted tribes in formulating strategies to prevent union organization of enterprise employees and with Fair Labor Standards Act issues, employment policies and establishment of best practices. For more information, contact Indian Nations Law Practice Group leader Brian Pierson at 414.287.9456 or bpierson@gklaw.com.

Godfrey & Kahn and Cottingham & Butler Present Affordable Care Act Conference

Godfrey & Kahn benefits attorney Todd Cleary and Adam Jensen, Vice-President of Compliance & Human Resource Consulting at Cottingham & Butler, presented “The Affordable Care Act: What do we know and where do we go from here?” at the Madison Club on April 4, 2013. The program focused on the impact of health care reform on employers, employees and the industry, and presentations included “Health Care Reform Legal Update and Potential Impacts” and “Opportunities for Plan Sponsors Under the Affordable Care Act.”

Godfrey & Kahn Updates of Note

In addition to this monthly Indian Nations Law Update, Godfrey & Kahn regularly publishes updates, alerts and blog entries by lawyers in other practice areas. Recent items of interest to our Indian country clients include:

“Department of Labor Issues Final FMLA Regulations”
By Margaret Kurlinski

“Activist NLRB Requires Dues Check-Off to Continue Following Contract Expiration”
By Jon Anderson

“Employment Verification Process Has Pitfalls Even in the Absence of Unauthorized Workers”
By Monica Santa Maria

“Fiscal Cliff Legislation Can Help Your Tribe Obtain Energy Independence”
By John L. Clancy

“HIPAA Omnibus Final Rule Has Important Changes for Business Associates and Covered Entities”
By Peggy L. Barlett, M. Scott LeBlanc, Thomas N. Shorter and Scott J. Thill

“Important Health Care ‘Pay or Play’ Rule and Other Developments for Employers”
By Todd Cleary

“EPA Announces Plans to Develop New Regulations to Address Healthcare Facilities’ Generation and Disposal of Hazardous Waste Pharmaceuticals”
By Joy Page

Selected Court Decisions

In United States v. McGeshick, 2013 WL 1286209 (7th Cir. 2013), McGeshik, employed by a tribal housing authority to oversee construction of 11 homes financed with federal funds, diverted some of the federal money to purchase appliances for her personal use. A federal court convicted her of theft by an employee of an Indian tribal government in violation of 18 U.S.C. § 666(a)(1)(A). The court applied a sentence enhancement for abuse of a position of trust and ordered her to serve 15 months’ imprisonment. On appeal, McGeshick argued that the enhancement was improper because she had no unilateral access to the funds and did not, therefore, hold a position of trust. The Seventh Circuit disagreed and affirmed, holding that it was sufficient that her supervisor “trusted her to request funding only for legitimate purposes.”

In U.S. v. Alvirez, 2013 WL 1092709 (9th Cir. 2013), Alvirez was convicted of assault resulting in serious bodily injury on an Indian reservation, in violation of the Major Crimes Act (MCA), 18 U.S.C. §§ 1153, for his role in an attack on Havatone, an individual, on the reservation of the Hualapai Nation. As proof of Alvirez’ status as an Indian, an essential element of a MCA offense, the government offered into evidence a Certificate of Indian Blood (Certificate) issued by the Colorado River Indian Tribes (CRIT). The government did not present a CRIT witness to authenticate the certificate, arguing that it was self-authenticating pursuant to Federal Rule of Evidence 902(1), which provides for self-authentication of documents issued under seal of “the United States, or of any State, district, Commonwealth, territory, or insular possession thereof… or of a political subdivision, department, officer, or agency thereof.” The district court affirmed the conviction but the Ninth Circuit reversed, holding that Indian tribes are not among the entities mentioned in Rule 902.

In Alabama-Coushatta Tribe of Texas v. United States, 2013 WL 1279051 (E.D. Tex. 2013), the Alabama-Coushatta Tribe of Texas (Tribe) sued the United States and federal officials for breach of fiduciary duty pursuant under the Indian Nonintercourse Act (INA), 25 U.S.C. § 177, the Mandamus Act and the Administrative Procedures Act (APA), seeking (1) a declaration that the Tribe holds aboriginal title to millions of acres alienated in violation of the INA, (2) an injunction prohibiting the federal government from issuing permits and leases for the exploitation of mineral and timber resources without “considering and accommodating” the Tribe’s aboriginal title rights, and (3) an accounting of revenues and profits derived by the government from these activities. A magistrate judge recommended dismissing the case based on lack of subject matter jurisdiction in the absence of a waiver of the government’s sovereign immunity, holding that there was no “final action” for purposes of the waiver in the APA, that the Tribe could not state a claim under the APA because the alleged trespasses to its aboriginal title were committed by the federal government itself and because the Tribe could not point to a “specific rights-creating or duty imposing statutory or regulatory prescriptions,” as required by Supreme Court precedents. The district court agreed and adopted the magistrate’s recommendations.

In Akiachak Native Community v. Salazar, 2013 WL 1292172 (D.D.C. 2013), four tribes of Alaska Natives and one individual Native challenged a federal regulation of the Department of Interior (DOI) that prevents Alaskan tribes from seeking to have land
acquired in trust pursuant to Section 5 of the Indian Reorganization Act (IRA) (Fee To Trust), citing a 1994 amendment to the IRA, 25 U.S.C. § 476(g), barring “[a]ny regulation ... that classifies, enhances, or diminishes the privileges and immunities available to a federally recognized Indian tribe relative to the privileges and immunities available to other federally recognized tribes by virtue of their status as Indian tribes.” The court granted the plaintiffs’ motion for summary judgment, rejecting the arguments of the State of Alaska and the DOI that the regulation was justified by the Alaska Native Claims Settlement Act (ANCSA): “[T]he court concludes that the Secretary retains his statutory authority to take land into trust on behalf of all Alaska Natives, and that his decision to maintain the exclusion of most Natives from the land-into-trust regulation violates 25 U.S.C. § 476(g).”

In Navajo Nation v. Urban Outfitters, Inc., 2013 WL 1294670 (D.N.M.), the Navajo Nation (Nation) sued Urban Outfitters and others, alleging that the defendants used “Navajo” and “Navaho” as names and marks in connection with jewelry, clothing and other products in direct competition with NAVAJO-branded goods and that the defendants were liable to the Nation for trademark infringement, trademark dilution, violations of the Lanham Act, unfair competition, false advertising, commercial practices laws violations, and violation of the Indian Arts and Crafts Act. The court denied the defendants’ motion to dismiss on all of the plaintiff’s claims except that the court dismissed the theories that (1) use of “Navaho” is “scandalous” because the Navajo Nation Code provides that the use of “Navajo” shall use the spelling “j,” not “h,” and that (2) Defendants’ use of “Navajo” with products like its “Navajo Flask” is derogatory and scandalous because it violates Navajo anti-alcohol principles.

In Historic Eastern Pequots v. Salazar, 2013 WL 1289571 (D.D.C.), the Department of Interior Assistant Secretary for Indian Affairs had issued a “Final Determination” in 2002 concluding that the “historical Eastern Pequot tribe,” represented by the Eastern Pequot Indians of Connecticut and the Paucatuck Eastern Pequot Indians of Connecticut, satisfied the regulatory criteria for federal acknowledgment. The Interior Board of Indian Appeals (IBIA), however, reconsidered that decision, vacated it and issued “Reconsidered Final Decision” (RFD) in the Federal Register denying federal recognition on Oct. 14, 2005. In January 2012, the “Historic Eastern Pequots” sued the government in a multi-count complaint. The court dismissed for lack of jurisdiction, holding that (1) the plaintiffs lacked standing because they could not clearly demonstrate that they were the same entity denied recognition, (2) alternatively, the plaintiffs failed to bring their claim within six years, as required by the Administrative Procedure Act, (3) the plaintiff could not assert a claim under the Indian Nonintercourse Act (INA) because status as a tribe is a prerequisite for such a claim, the court would defer to the IBIA’s determination and, in any event, an INA claim would not overcome the federal government’s immunity from suit or the statute of limitations defects in the action, and (4) the Indian Gaming Regulatory Act did not provide a private cause of action or waive the federal government’s immunity.

In Shiprock Associated Schools, Inc. v. U.S., 2013 WL 1277730 (D.N.M.), Shiprock Associated Schools, Inc. (SAS), a Navajo Nation corporation, operated a pre-K through twelfth grade school program on the Navajo Reservation pursuant to a grant agreement with the Department of Interior’s Bureau of Indian Education (BIE) under the Tribally Controlled Schools Act (TCSA). The BIE sought to disallow certain administrative costs incurred by SAS that were above its “prorated need amount” but below its “calculated need amount” based on BIE’s interpretation of the TCSA. The government moved to dismiss but the court denied the motion, rejecting the government’s interpretation of the statute and adopting instead SAS’ interpretation: “[T]he Court disagrees that the relevant statutory provisions clearly and unambiguously prohibit the use of ... funds to defray administrative costs. As discussed above, under the canon of construction favoring Native Americans, to the extent that Sections 2008(b)(1) and 2052(a)(3)(A) are ambiguous, the Court must construe these provisions liberally in favor of the School. If these provisions can reasonably be construed as the School would have them construed, the Court must construe them that way.”

In Center for Biological Diversity v. Salazar, 706 F.3d 1085 (9th Cir. 2013), environmental organizations, the Kaibab Band of Paiute Indians and the Havasupai Tribe (Tribes) sued the Secretary of the Department of Interior (DOI) and the Bureau of Land Management (BLM), alleging that the defendants violated the National Environmental Policy Act (NEPA), Federal Land Policy and Management Act (FLPMA), and BLM regulations, by permitting a mining company to restart operations at a uranium mine site, after a 17-year hiatus, under a plan of operations approved by the BLM. The district court granted summary judgments in favor of defendants, and the Ninth Circuit Court of Appeals affirmed, holding that (1) approval of a new plan of operations was not required before regular mining activities could recommence, (2) issuance of a gravel permit to the county, and requirements that the mining company obtain a new air quality control permit, and approval
of an updated reclamation bond before restarting mining operations did not require supplementation of the prior environmental analysis, and (3) invocation of categorical exclusion from the environmental impact statement (EIS) requirement for issuance of the gravel permit was not arbitrary and capricious.

In **Hansen v. Salazar**, 2013 WL 1192607 (W.D. Wash. 2013), the Duwamish, whose members descended from the historical Duwamish Tribe (Tribe), applied some time before 1978 for federal acknowledgment as a Tribe pursuant to regulations promulgated in 1978. New regulations issued in 1994 provided lesser evidentiary requirements for applicants that could show “substantial evidence of unambiguous federal acknowledgment” in the past. The Tribe exercised its option to have its application considered under the 1978 regulations. In the waning hours of the Clinton administration, the Acting Assistant Secretary of the DOI approved the application but the approval could not be finalized before it was revoked by the Bush administration, which subsequently denied the Tribe’s petition. Representatives of the Duwamish Tribe sued the Secretary of the Department of Interior (DOI), contending that the DOI’s Office of Federal Acknowledgement (OFA) violated the Administrative Procedures Act when it arbitrarily and capriciously denied the Tribe’s petition for federal acknowledgment. Specifically, the Tribe contended that since the OFA had taken the 1994 criteria into account in connection with another tribe’s application, it should have done the same for the Duwamish. The district court agreed and remanded the case to the DOI “to either consider the Duwamish petition under the 1994 acknowledgment regulations or explain why it declines to do so.”

In **Federal Trade Commission v. Payday Financial, LLC.**, 2013 WL 1309437 (D.S.D. 2013), the Federal Trade Commission (FTC) sued ten payday lending companies owned by Martin Webb, a member of the Cheyenne River Sioux Tribe, for violations of the Federal Trade Act, alleging in particular that provisions in contracts with off-reservation borrowers vesting jurisdiction over any disputes in the Cheyenne River Tribal Court constituted an “unfair and deceptive practice.” The defendants moved for summary judgment, arguing that tribal court jurisdiction was permissible under the rule of **Montana v. United States**, which provides for tribal jurisdiction over non-Indians who enter into consensual relationships with tribes or Indians. The court denied the defendants’ motion, holding that (1) “[w]hen a nonmember enters into a commercial transaction with a tribal member or reservation-based tribal business, receives a benefit coming from the reservation as a result, and consents in a written contract to tribal jurisdiction,” a consensual relationship within the meaning of Montana arises, (2) it was unclear whether the defendants, South Dakota LLCs, were tribal members for purposes of the Montana Rule, (3) the circumstances of the transactions were sufficient to establish that the borrowers’ activities took place on the reservation even if they were not physically present (“in cases involving a contract formed on the reservation in which the parties agree to tribal jurisdiction, treating the nonmember’s physical presence as determinative ignores the realities of our modern world that a defendant, through the internet or phone, can conduct business on the reservation and can affect the Tribe and tribal members without physically entering the reservation”), and (4) contradictory provisions in the agreements left it uncertain whether borrowers were consenting to binding arbitration or tribal court jurisdiction, undercutting their consent and precluding summary judgment.

In **Perez v. Consolidated Tribal Health Project, Inc.**, 2013 WL 1191242 (N.D.Cal. 2013), Perez was injured when she slipped and fell in the restroom of the Consolidated Tribal Health Project, Inc. (CTHP), a health clinic serving 10 tribal communities in Mendocino County under a contract with the Indian Health Service pursuant to the Indian Self-Determination and Education Assistance Act (ISDEAA). Perez sued in state court, alleging that CTHP was negligent. CTHP removed to federal court and moved to dismiss on the ground that Perez’ sole remedy was pursuant to the **Federal Tort Claims Act** (FTCA) and that Perez had failed to submit a claim to the government before filing suit, as required by the FTCA. The court agreed and dismissed, citing federal regulations providing that the “FTCA is the exclusive remedy for a non-medical related tort claim arising out of the performance of a self-determination contract.”

In **Dinger v. U.S.**, 2013 WL 1001444 (D.Kan. 2013), Dinger sued the federal government under the **Federal Tort Claims Act** (FTCA), alleging that her husband died as a result of negligent driving by Wishkeno, a member of the Kickapoo Tribe in Kansas, and that Wishkeno was a government employee for FTCA purposes based on her employment as Kickapoo Child Care Services Program Coordinator, a program funded by the Department of the Interior pursuant to the Indian Self-Determination and Education Assistance Act (ISDEAA). Based on two affidavits from federal officials averring that there was no ISDEAA contract, the court dismissed for lack of jurisdiction based on the government’s immunity from suit.

JP, attended an after school program operated by the Hannahville Indian School (a/k/a Nah Tah Washsh PSA) called “Kid Zone” partially funded under the Tribally Controlled School Act (TCSA) and the Indian Self-Determination and Education Assistance Act (ISDEEAA). After program activities, a program assistant allegedly left JP in a parking lot unattended to await transportation to another program. JP was injured when he slipped on ice and fell under the wheels of a moving bus. 

Rock sued the U.S. government under the Federal Tort Claims Act (FTCA), but the court dismissed based on language in the congressional appropriations act stating that “[e]mployees of Bureau-funded schools sharing a campus with a charter school and performing functions related to the charter schools operation and employees of a charter school shall not be treated as Federal employees for purposes of the FTCA.”

In Kinlichee v. U.S., 2013 WL 943042 (D.Ariz.), the biological children of Felix Kinlichee, a Navajo citizen, sued the U.S. government for medical malpractice under the Federal Tort Claims Act (FTCA) after Kinlichhee died following treatment at the Chinle Comprehensive Health Care Facility (CCHCF) on the Navajo Nation. A step-daughter of Kinlichee, Davis, also sued after obtaining a posthumous “Order Validating Navajo Common Law Adoption” from a Navajo Nation family court. The government moved to dismiss on the grounds that the plaintiffs failed to exhaust administrative remedies and contested Davis’ standing, but the court rejected both arguments: “Although the adoption was posthumous as to Mr. Kinlichee and retroactive to 2003, the Navajo court granted the adoption. … Additionally, the Ninth Circuit Court of Appeals has held that a state must give full faith and credit to adoption decrees issued by the tribal court of a Native American sovereign. Venetie I.R.A. Council v. Alaska, 944 F.2d 548, 562 (9th Cir.1991). There is no issue known to the Court, or raised here, suggesting that the Navajo Nation lacks the status of a Native American sovereign, and its tribal court granted Ms. Davis an adoption order. If Ms. Davis had been legally adopted by Mr. Kinlichee in another state, and then became a tort plaintiff in the District of Arizona, that adoption likely would not be questioned, or legally analyzed for its merits, before Ms. Davis would be granted standing. Accordingly, this Court must recognize the order of the Navajo court validating Mr. Kinlichee’s adoption of Ms. Davis.”

In Allen v. Smith, 2013 WL 950735 (S.D.Cal. 2013), members of the executive committee of the Pala Band of Mission Indians reevaluated the blood quantum of Margarita Britten, a person listed on a 1913 membership roll, and determined that she was not full blood, as had previously been determined. The Tribe’s membership rules required descent from one of two rolls, including the 1913 roll, and 1/16 blood quantum. 

As a result of the reevaluation, many of Britten’s descendants were stricken from the rolls. Twenty-seven sued the executive committee members for monetary damages and declaratory and injunctive relief, charging them with conspiracy to interfere with their civil rights, in violation of 42 U.S.C. § 1985(3), deprivation of equal rights to contract in violation of 42 U.S.C. § 1981, conversion, tortious interference with prospective economic advantage, defamation and civil conspiracy. The district court dismissed on the ground that the defendants were protected by sovereign immunity, rejecting the plaintiffs’ argument that they acted beyond the scope of their authority: “Based upon the “essential nature and effect” of the injunctive and declaratory relief sought in the Complaint, the Court finds that the Pala Tribe is the ‘real, substantial party in interest’ in this case. … Only the Pala Tribe, whose sovereign immunity is unquestioned, could satisfy the relief sought in the Complaint, i.e. the reinstatement of Plaintiffs as members of the Tribe. … The Court finds that the relief sought in this Complaint would require affirmative action by the sovereign,’ i.e. the Pala Tribe’s re-enrollment of Plaintiffs. … Such a remedy would operate against the Pala Tribe, impermissibly infringing upon its sovereign immunity.”

In Villegas v. United States, 2013 WL 791770 (E.D. Wash. 2013), Villegas, a member of the Spokane Indian Tribe, was the owner of a trust allotment on the Spokane Indian reservation. The Department of Interior had authorized uranium mining on the land, resulting in contamination. After termination of mining activities, the government and the mining company entered into a plan to remediate the contamination under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Villegas filed claims for declaratory and equitable relief, seeking to prevent the federal defendants from “further damaging, devaluing and interfering with” his uranium rights and from performing “any acts or omissions that affect the Plaintiff’s rights without first initiating meaningful, informed, and prior consultation.” The court dismissed, holding that (1) CERCLA deprived the Court of jurisdiction to grant the requested injunctive relief because it would interfere with an ongoing removal or remedial action under CERCLA, and (2) the requested declaratory relief relating to the plaintiff’s Takings claim, if granted, would impermissibly short-circuit the exclusive jurisdiction of the Court of Federal Claims.
In *Muwekma Ohlone Tribe v. Salazar*, 2013 WL 765009 (D.C. Cir. 2013), the Muwekma Ohlone Tribe (Tribe) sued the Secretary and other officials of the Department of Interior (DOI) under the Constitution and the Administrative Procedure Act (APA), seeking review of the DOI’s “Final Determination Against Federal Acknowledgment” of the Tribe pursuant to federal 25 C.F.R. Part 83 acknowledgement regulations. The court upheld the Secretary’s decision and the Court of Appeals for the D.C. Circuit affirmed, holding that (1) the Secretary’s recognition of two other tribes outside the Part 83 process did not support an equal protection claim because the facts relating to the other tribes were distinct, (2) the Secretary’s action did not constitute an illegal termination of the Verona Band, a previously recognized tribe to which some Muwekma members traced their roots, because the Verona Band had not been terminated but had instead “faded away,” and (3) the Secretary’s decision was not arbitrary or capricious.

In *Quechan Tribe of Ft. Yuma Indian Reservation v. U.S. Dept. of the Interior*, 2013 WL 755606 (S.D.Cal. 2013), the Tribe sued the U.S. Department of Interior (DOI) and DOI officials under the Administrative Procedure Act (APA), challenging DOI’s approval of the Ocotillo Wind Energy Facility Project (OWEF), a utility-scale wind power project comprising of 112 turbines in the Sonoran Desert in Imperial County, California. The Tribe alleged violations of the National Historic Preservation Act, (NHPA), Federal Land Policy and Management Policy Act, (FLPMA), National Environmental Policy Act, (NEPA), Archaeological Resources Protection Act, (ARPA), and Native American Graves Protection and Repatriation Act (NAGPRA), arguing that the OWEF area contains cultural and biological significance to the Tribe. The court granted the government’s motion for summary judgment and dismissed, rejecting all of the Tribe’s arguments, including the Tribe’s contention that the DOI failed to consult: “Here, BLM made numerous attempts starting in 2010 and then in 2011 to engage in government to government consultation. Quechan did not accept the BLM’s repeated requests to engage in government to government consultation until December 2011. Moreover, no request for meetings by the Tribe was made or initiated until December 2011. Once the first meeting was held on January 31, 2012, subsequent monthly meetings were held between BLM and the Tribal Council.”

In *Saybrook Tax Exempt Investors, LLC v. Lake of the Torches Economic Development Corp.*, 2013 WL 937600 (W.D.Wis. 2013), Saybrook Tax Exempt Investors (STEI) had purchased taxable gaming revenue bonds issued by Lake of the Torches Economic Development Corp, a tribally owned gaming corporation (LOTT). STEI sued when LOTT failed to repay the bonds. STEI also sued the brokerage firm that placed the bonds and the law firm that had opined on their enforceability. A federal district court held that the bond indenture, which contained a waiver of LOTT’s sovereign immunity, was a “management contract” for purposes of the Indian Gaming Regulatory Act (IGRA) and that, because the National Indian Gaming Commission had not approved it, was unenforceable. The Seventh Circuit affirmed but remanded for a determination whether a waiver of LOTT sovereign immunity had waived its immunity in the bond itself or in other transaction documents. STEI sued in state court but also in federal court since the waiver in the bond permitted a suit in state court only if jurisdiction were rejected by the federal court. The court held that it lacked federal question jurisdiction under Indian Gaming Regulatory Act or any other federal law but that additional information would be required to determine the court’s possible diversity jurisdiction.

In *Rodewald v. Kansas Dept. of Revenue*, 2013 WL 1173932 (Kan. 2013), Prairie Band Potawatomi Nation (Nation) Police Officer Hurla stopped Rodewald, an 18-year-old member of the Nation, for driving recklessly within the boundaries of the Nation’s reservation. After a breath test indicated that Rodewald’s blood alcohol level was .046, Hurla sent the test results to the Kansas Department of Revenue (KDR) which, pursuant to a Kansas law, K.S.A. 8–1567a, that prohibited “any person less than 21 years of age to operate or attempt to operate a vehicle in this state with a breath or blood alcohol content of .02 or greater.” Rodewald argued that the reservation was not within the jurisdiction of the state and was not, therefore “in this state” for purposes of the Kansas law. The Kansas Supreme Court agreed: “[O]ne must interpret the phrases ‘within this state’ and ‘in this state’ to mean within the jurisdiction of a Kansas law enforcement officer. That definition would not include the roadways—either public or private—within the Nation’s reservation over which its tribal police have assumed jurisdiction to enforce tribal law.”

In *re Yakima River Drainage Basin*, 2013 WL 865457 (Wash.) addresses the allocation of water rights in the Ahtanum Creek, a tributary of the Yakima River and, in particular, the rights of the Yakama Nation (Nation) under the doctrine of *Winters v. United States*. The federal government challenged the ruling of the state trial court that earlier federal court decisions had determined the practicably irrigable acreage (PIA) of the Nation’s reservation and that the Nation was not entitled to store water. The Washington Supreme Court held that (1) the trial court had erred and the case would be remanded for a determination of the reservation’s PIA, (2) the trial
court erred in denying the Nation a right to store water and the case would be remanded for determination of the scope of that right, and (3) nontribal users would have limited rights to excess water.

In Carden v. Owle Const., LLC, 2013 WL 1121314 (N.C.App. 2013), Owle Construction LLC (Owle), an Indian-owned business, was performing construction work on the Qualla Boundary Indian Reservation of the Eastern Band of Cherokee Indians pursuant to a contract with Harrah’s NC Casino Company, LLC (Harrahs), the company that operates the Tribe’s casino. Carden sued Owle and Harrahs in state court after he was injured in an accident allegedly caused by Owle’s negligence. The case was removed to the Cherokee tribal court, where most claims were settled. Carden attempted to litigate the remaining claim in state court but the court dismissed for lack of jurisdiction and the court of appeals, affirmed, holding that the Tribal Court’s previous ruling that it had jurisdiction was entitled to **full faith and credit** under North Carolina law.