Godfrey & Kahn Assists Tribes Exploring Formation of Banks and Other Lending Institutions

Most tribal communities have inadequate banking and financial services. In order to fill this need, tribes are increasingly exploring forming their own banks or credit unions. Reasons for these initiatives may include (1) removing cultural barriers that sometimes prevent tribal members from applying for loans from commercial lenders, (2) encouraging entrepreneurship among tribal members by making credit more available than is currently available through local banks, and (3) replacing tribal loan programs with a structure that is more business-like and which enables the tribe to minimize defaults and increase collections, and (4) making a profit for the tribe.

In order for tribal governments to evaluate the feasibility of a tribal lending institution, they need to understand the various types of lending institutions in order to decide which would best meet the Tribe’s needs. It is also necessary to determine the federal deposit insurance requirements and the regulatory obligations that a tribal lending institution would have under state or federal law and assess how the Tribe might meet these obligations (e.g. with existing personnel, hiring consultants, partnering with another lending institution, etc.). In considering its options concerning the type of lending institution to be formed, tribal government should take into account the demands that each type of lending institution may make on the tribe’s personnel and financial resources.

Godfrey & Kahn’s Indian Nations and Banking & Financial Institutions teams advise tribes exploring formation of a tribally owned financial institution. For more information, contact Indian Nations Law Practice Group leader Brian Pierson at 414.287.9456 or bpierson@gklaw.com.

Godfrey & Kahn Attorney John Reichert to Present on “Best Practices for Community Banks” in Chicago June 17

John Reichert, a shareholder on Godfrey & Kahn’s Banking & Financial Institutions team, will present “Positioning Your Bank & Seizing Opportunities” June 17 at the Oakbrook Marriott, 1401 West 22nd Street, Oak Brook, Illinois. The conference, entitled “Leveraging Best Practices for Community Banks in the New Regulatory and Competitive Environment,” will address:

- Staying ahead of your regulators and competitors.
- Capital adequacy stress testing & why it MUST be linked to strategic planning.
- How to transform your strategic planning processes, whether yours is a healthy or “not so healthy” bank.
- What “smart” banks are doing to position themselves and seize opportunities.
- Effectively managing your downside risks.

To register, email chicagoconf@invictusgrp.com; please provide the name of your bank and the names and titles of the attendees.
U.S. DOE Grants Indian Country Energy Grants

The U.S. Department of Energy (DOE) announced up to $7 million in new funding opportunities to help deploy clean energy projects in tribal communities. These grants can help tribes reduce reliance on fossil fuels and promote economic development and energy independence.

The “Community-Scale Clean Energy Projects in Indian Country” ($2.5 to $4.5 million total available funds) grant program will aid tribes in installing clean energy systems that reduce fossil fuel use by at least 15% in either new or existing tribal buildings. Individual awards may range from $50,000 to $1.5 million, with a minimum 50% cost share required, and DOE anticipates making 10 to 20 awards. The application deadline for this grant is June 27, 2013.

The “Tribal Renewable Energy and Energy Efficiency Deployment Assistance” grant program (approximately $2.5 million total funds available) will aid tribes in installing renewable energy and energy efficiency technology that reduce fossil fuel use in existing tribal buildings by at least 30%. Individual awards may range from $50,000 to $250,000, with a minimum 50% cost share required. DOE anticipates making 10 to 20 awards. The application deadline for this grant is June 20, 2013.

Godfrey & Kahn Health Law Team to Present on New HIPAA Rules

Under the recently released HIPAA Omnibus Rule, more privacy and security requirements may apply to an increased number of corporate entities and organizations. Godfrey & Kahn will offer a complimentary breakfast program focusing on the impact of these significant HIPAA privacy and security requirements on business associates, subcontractors, and covered entities at the following times and locations:

- Tuesday, June 18 - Green Bay
  Speakers: Scott Thill & Tom Shorter
  St. Brendan’s Inn
  234 South Washington Street
  Green Bay, WI 54301

- Tuesday, June 25 - Milwaukee
  Speaker: Scott LeBlanc & Tom Shorter
  Godfrey & Kahn Office
  780 North Water Street
  Milwaukee, WI 53202

- Thursday, June 27 - Madison
  Speaker: Peggy Barlett & Tom Shorter
  Godfrey & Kahn Office
  One East Main Street, Suite 500
  Madison, WI 53701

Please RSVP by Friday, June 7 to Stephanie Hecht at shecht@gklaw.com or 414.287.9532.

Godfrey & Kahn to Present on Financing Renewable Energy at Albuquerque Conference June 11

The “Developing Tribal Energy Resources and Economies Conference” will be held June 10-12, 2013 at Sandia Resort and Casino, Albuquerque, New Mexico. Godfrey & Kahn attorneys Brian Pierson and John Clancy will join with Forest County Potawatomi Attorney General Jeffrey Crawford to present “Casino Energy Consumption and the Seven Generations Ethic” from 3:00 to 4:30 pm on Tuesday, June 11. The presentation will describe successful Indian country projects and focus on financing strategies that enable tribes to convert to cleaner, less expensive energy using federal tax incentives and other non-tribal funding sources. For more information, see: http://www.gklaw.com/hs/EventsDetail.aspx?EventID=1155048

Godfrey & Kahn works with tribes to maximize outside funding sources to finance green energy and promote tribal energy independence. For more information about Godfrey & Kahn’s Indian country experience, or a free consultation, contact Indian Nations Law Practice Group leader Brian Pierson at 414.287.9456 or bpierson@gklaw.com, or Environmental and Energy Strategies team leader John Clancy at 414.287.9256 or jclancy@gklaw.com.

Selected Court Decisions

In Spirit Lake Tribe of Indians ex rel. Committee of Understanding and Respect v. NCAA, 2013 WL 2320811 (8th Cir. 2013), elders of the Standing Rock tribe, joined by one Spirit Lake Sioux Tribe elder, in 1969 had ceremonially approved use of the Fighting Sioux name by the University of North Dakota (UND), a National Collegiate Athletic Association (NCAA) member. In 2005, the NCAA began prohibiting the display of Native American mascots, nicknames, and images at championship events. In 2007, UND and the North Dakota State
Board of Higher Education (Board) entered an agreement with the NCAA allowing UND to retain the name without sanctions if the Spirit Lake and Standing Rock tribes approved before November 30, 2010. The Spirit Lake Tribe granted approval, but the Standing Rock Tribe, which had passed resolutions in 1992, 1998 and 2005 requesting that UND discontinue use of the “Fighting Sioux” name, did not. The Spirit Lake Tribe’s Committee of Understanding and Respect (Committee) sued, contending that the NCAA’s actions constituted race discrimination in contractual matters in violation of 42 U.S.C. § 1981 and claiming that ending use of the name would dishonor the 1969 sacred ceremony, violate their dignity and cause “family turmoil, shame, humiliation, persecution, and damage to Sioux youth self-esteem and educational opportunities.” The district court granted the NCAA’s motion for summary judgment and the Eighth Circuit Court of Appeals affirmed, holding that (1) the Committee had failed to show discriminatory intent and that, in any event, the 1969 ceremony was not a “contract” for purposes of Section 1981.

In Gila River Indian Community v. U.S., 2013 WL 2171652 (9th Cir. 2013), the Secretary of the Interior (DOI) had taken 135 acres into trust for the Tohono O’odham Tribe (Tribe or Nation) pursuant to the 1986 Gila Bend Indian Reservation Lands Replacement Act (Act). Section 6(c) of the Act imposed an acreage limit. Section 6(d) established that trust land referred to land “within the corporate limits” of a city. The Secretary to interpret the ambiguous phrase “within the corporate limits:” Similarly, the government and the Nation argue for a jurisdictional meaning. Any land not subject to a city’s corporate jurisdiction is not “within” the city. The Arizona appellants contend the phrase should have a geographical meaning: Any land entirely surrounded by a city’s corporate limits is “within” the city.

In U.S. v. Aguilar, 2013 WL 2129090 (10th Cir. 2103), Aguilar, a member of the Kewa Pueblo (formerly Pueblo of Santo Domingo), was convicted of violating the Bald and Golden Eagle Protection Act (BGEPA) by taking a bald eagle and possessing bald eagle parts without a permit. The district court (1) denied Aguilar’s motion to suppress based on the contention that federal agents searched his home under false pretenses by giving the impression that the pueblo governor had authorized their investigation and (2) rejected his argument that, in light of the government’s de-listing of the bald eagle under the Endangered Species Act, the BGEPA violated his right to practice of religion in violation of the Religious Freedom Restoration Act (RFRA). The tenth Circuit affirmed, holding that Aguilar’s subjective belief regarding the Pueblo’s governor authorization of the agents’ search did not justify suppression and rejecting the argument based on de-listing: “[T]he delisting of the bald eagle, the USFWS specifically cited the Eagle Protection Act, among other federal statutes, as providing the sufficient protections to ensure the continued health of the eagle population. ... Therefore, the delisting, standing alone, does not require this court to recalculate the interests involved and the means required to serve those interests in light of Aguilar’s RFRA challenge.”

In Miccosukee Tribe of Indians of Florida v. U.S., 2013 WL 1983870 (9th Cir. 2013), the Cahto Tribe (Tribe) in 1995 had disenrolled 22 members on the ground that they had been enrolled by the Yurok tribe and received funds under the Hoopa-Yurok Settlement Act (Act). The BIA refused to honor the Tribe’s decision, finding that the Tribe had misinterpreted the Act. The district court upheld the Bureau of Indian Affair’s determination but the Ninth Circuit Court of Appeals reversed, holding that, (1) pursuant to federal regulations, 25 C.F.R. Part 62.4(a)(3), persons adversely affected by an enrollment action may appeal to the Secretary of the Interior only “when the tribal governing document provides for an appeal of the action” and (2) the Tribe’s constitution unambiguously provided for an appeal only for initial enrollment decisions. See also, Cahto Tribe of Laytonville Rancheria v. Dutschke, 2013 WL 1987350 (9th Cir. 2013) (affirming trial court’s denial of disenrolled members’ motion to intervene.).

In Quantum Entertainment Ltd. v. U.S. Dept. of the Interior, 2013 WL 1799902 (D.C. Cir. 2013), Kewa Gas Limited (Kewa) operated a retail gas station, gas distribution business and related businesses for the Santa Domingo Pueblo (Tribe). The Tribe and Kewa entered into an agreement with Quantum Entertainment, Ltd (QEL) in 1996 pursuant to which QEL managed Kewa’s gas distribution business in return for 49% of income, plus bonuses. With renewal rights, the agreement permitted QEL to
operate up to 30 years. In 2003, the Tribe asked BIA to review the agreement under 25 U.S.C. § 81 which, until 2000, provided that “[n]o agreement shall be made by any person with any tribe... for the payment or delivery of any money or other thing of value ... in consideration of services ... relative to their lands ... unless such contract or agreement be executed and approved [by the Secretary] of the DOI.” The Interior Board of Indian Appeals (IBIA) determined that if the contract were evaluated under 25 U.S.C. § 81 after its revision in 2000, the agreement would be enforceable, but that under 25 U.S.C. § 81 as in effect in 1996 the contract required secretarial approval. IBIA decided to apply the 1996 version of Section 81 and declared the agreement invalid and unenforceable against the Tribe. QEL sought judicial review under the Administrative Procedures Act but the federal district court upheld the IBIA decision, holding that it would be improper to apply post-2000 Section 81 because it imposed burdens, i.e., an enforceable contract, on the Tribe that were absent in 1996. The Court of Appeals affirmed.

In Seneca Nation of Indians v. U.S. Dept. of HHS, 2013 WL 2255208 (D.D.C.), the Seneca Nation of Indians (SNI or Nation) administered its health care programs through a self-determination contract with the Indian Health Service (IHS), an agency of the U.S. Department of Health and Human Services (HHS), under the Indian Self-Determination and Education Assistance Act (ISDEAA). Beginning in 2000, the SNI entered into a series of Annual Funding Agreements. In 2011, after discovering errors in the previously reported number of persons served, the Nation, by means of a letter from its president, submitted a contract amendment to the IHS to increase funding for fiscal years 2010 and 2011 based on the correct numbers. After the IHS failed to respond to the proposal within the 90 days, as required by statute, and failed to honor the amendment, the Nation sued, asserting that its proposed amendment automatically became part of its contract. The district court agreed and granted the Nation’s motion for summary judgment. Emphasizing the HHS Secretary’s burden under the ISDEAA to “clearly demonstrate[e] the validity of the grounds for declining a contract proposal (or portion thereof),” the court rejected the government’s arguments that the time for performance of the contract had already expired when the amendment was proposed, that the president’s letter was a “claim” rather than a proposed amendment, that the ISDEAA prohibited the Secretary from increasing the Nation’s funding and that the Nation had not provided sufficient justification for the increase in funding levels.

In Nasella v. Barona Valley Ranch Resort and Casino, 2013 WL 2301772 (S.D.Cal.), Nasella, a patron of Barona Valley Ranch Resort and Casino, owned and operated by the Barona Band of Mission Indians (Tribe), was allegedly injured at the casino in 2007. She filed a claim with the Tribe, which was denied. After she died, her estate appealed to the Tribal Court, which also found no liability. The estate then sued in federal court, alleging that the Tribe violated its compact with the State of California by denying her claim. The court dismissed, holding that the Tribe’s waiver of its immunity to permit claims to be brought in tribal court complied with the Tribe’s obligation under the compact and that the Tribe was immune from the plaintiff’s federal court suit.

In Butler v. Fortunes Asian Cuisine, 2013 WL 866492 (S.D.Cal.) Lorna Butler sued Fortunes Asian Cuisine, a restaurant located at Harrah’s Rincon Casino and Resort, an enterprise owned and controlled by the Rincon Tribe and located on the Tribe’s trust land, in state court. Butler alleged that she suffered personal injuries as a result of eating food at defendant’s establishment. The defendant removed to federal court, alleging that the Tribe violated its compact with the State of California by denying her claim. The court dismissed, holding that the Tribe’s waiver of its immunity to permit claims to be brought in tribal court complied with the Tribe’s obligation under the compact and that the Tribe was immune from the plaintiff’s federal court suit.

In Uniband, Inc. v. C.I.R., 140 T.C. No. 13, 2013 WL 2247986 (U.S.Tax Ct. 2013), the Turtle Mountain Band of Chippewa Indians (Tribe), was the sole owner of Uniband, Inc., a Delaware corporation (Uniband), Turtle Mountain Manufacturing Co. (TMMC), a North Dakota corporation, and a corporation, also called Uniband Corp. chartered under Section 17 of the Indian Reorganization Act (Section 17 Corporation). Uniband engaged in government contracting. Its articles of incorporation included an explicit waiver of sovereign immunity provisions “over
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all matters relating to the Corporation’s relationship with the United States Small Business Administration (SBA).” Uniband attempted to file consolidated returns with TMMCC, asserting that the Tribe was the common parent of Uniband and TMMC and that together they constituted an affiliated group eligible to file a consolidated return. Uniband’s goal was to largely offset its income with TMMC’s losses, resulting in little or no claimed tax liability for the consolidated group. Uniband did not claim Indian employment credits under I.R.C. sec. 45A even though it was entitled to them but instead deducted the entirety of its employee expenses. The IRS determined that the consolidated returns were invalid and that Uniband was required to claim a credit under I.R.C. sec. 45A and reduce its wage deduction by the entire credit amount (without regard to credit limitations for particular tax years). Uniband contended that, as an “integral part” of the Tribe, it shared the Tribe’s tax exemption. The U.S. Tax Court held that (1) Uniband, as a State-chartered corporation, was an entity separate and distinct from the Tribe and not exempt from the corporate income tax, (2) the consolidated returns filed for the years in issue were invalid because the Tribe did not file the returns and, in any event, the Tribe was not a “corporation” that could function as a “common parent” to Uniband and TMMC, (3) Indian employment credits under I.R.C. sec. 45A are not elective and, therefore, Uniband’s employee expense deductions for the years at issue must be reduced by the amount of the credit as determined under I.R.C. sec. 45A without regard to limitations on the allowable amount of the credit, and (4) the flexible standards that are applied by courts to determine whether a tribally-owned corporation shares a tribe’s sovereign immunity do not determine whether a tribal corporation is an “integral” part of a tribe for purposes of federal income tax liability but, if they did, Uniband would still not qualify.

In California ex rel. Harris v. Rose, 2013 WL 2145968 (E.D.Cal.), Rose, a member of the Alturas Indian Rancheria (Tribe), sold cigarettes at two smoke shops (Burning Arrow I in Siskiyou County and Burning Arrow II in Shasta County) on tribal land, purportedly under a tobacco ordinance enacted by the Tribe. California sued in state court, alleging that Rose’s sale of certain cigarettes (including the Skydancer, Sands, Seneca, Opal, Couture, King Mountain, Heron, and Native Pride brands) were unlawful because their manufacturers failed to comply with state financial responsibility laws and/or because the brands had not been certified as meeting state fire safety standards. California also alleged that Rose failed to collect and remit excise taxes on the sales of these cigarettes. Rose removed to federal court but, on the state’s motion, the court remanded to state court. According to the court, neither the possibility of an immunity defense, the state’s reference to trust land in the complaint, nor the tribal trust land site of the shops raised a federal question sufficient to support federal jurisdiction: “The statutes under which California sues do not appear to require proof of the ability to regulate conduct on tribal land. Accordingly, California need not demonstrate that it has the right to proceed against Rose (whether under an enabling federal statute or due to some ‘exceptional circumstance’ recognized by the courts) unless Rose first raises tribal immunity as an affirmative defense.”

In City of New York v. Gordon, 2013 WL 2190060 (S.D.N.Y.), Gordon, a member of the Seneca Nation of New York (Nation), owned “All Of Our Butts,” a company (Company) that sold unstamped, untaxed tobacco products over the phone and internet, as well as in person on the Nation’s Allegany Reservation. Gordon’s wife, a non-member of the Nation, managed the business. Cigarettes sold to residents of New York City were delivered by Regional Parcel Services (RPS). The City sued the Gordons and RPS seeking injunctive relief, penalties, and damages for violations of the Prevent All Cigarette Trafficking Act (PACT Act), the Contraband Cigarette Trafficking Act (CCTA), Cigarette Marketing Standards Act (CMSA), and the Racketeer Influenced and Corrupt Organizations Act (RICO). On the parties’ cross-motions, the court granted the City’s motion for a preliminary injunction, rejecting the defendants’ argument that the City was attempting to require them to stamp cigarettes manufactured by, and sold to, Indians: “The City is doing no such thing. Instead, it is merely enforcing its tax on cigarettes sold to City residents. The law is clear that, while states (and cities) may not tax cigarettes sold to Native Americans on Native American reservations, they may tax cigarettes sold by Native Americans to non-Native American consumers.”

In Citizens Against Casino Gambling in Erie County v. Stevens, 2013 WL 1966380 (W.D.N.Y. 2013), the Chair of National Indian Gaming Commission (NIGC) in 2007 had approved a gaming ordinance of the Seneca Nation of Indians (Nations) authorizing gaming on land that the Nation had acquired in Buffalo, New York, in 2005 pursuant to a provision in the Seneca Nation Settlement Act of 1990 (Act). The Act authorized the Nation to use Act settlement funds to purchase land anywhere “within its tribal land in the State of New York” or situated within or near proximity to former reservation land” and provided that such lands would be subject to the Indian Noninterturbance Act and “held in restricted fee status by the Seneca Nation.” The plaintiffs sued under the Administrative Procedure Act, contending that the Buffalo parcel did not satisfy the Indian Gaming Regulatory Act (IGRA) definition of “tribal land” because the Nation lacked “governmental power” over it and because the Act was not “settlement of a land claim” for purposes of the IGRA’s Section 20 exception to the general rule prohibiting gaming on lands acquired after the passage of IGRA in 1988. The court rejected both challenges, holding that (1) the Tribe had governmental power over the parcel and (2) the Section 20 exceptions were relevant only to lands acquired by the federal government in trust and did not apply to restricted fee lands that the Nation purchased pursuant to the Act.

In Arizona v. Tohono O’odham Nation, Not Reported in F.Supp.2d, 2013 WL 1908378 (D.Ariz.), the Secretary of the Interior (DOI) had taken 135 acres, located on unincorporated land in Maricopa County surrounded by the Phoenix suburb of
In *Lexington Ins. Co. v. Data Aire, Inc.*, 2013 WL 1832556 (W.D.N.C. 2013), Lexington Ins. Co. (Lexington) filed an action in state court on November 19, 2012, alleging that it had provided a property and business loss insurance policy to Tribal Casino Gaming Enterprise (Tribal Casino) for real and personal property which it owned at the Cherokee Casino and Hotel in Cherokee, North Carolina, that it had paid a claim under the policy based on a “loss of cooling event” and that the defendants, foreign corporations, had provided faulty equipment causing the loss and were, therefore, responsible to Lexington under the theory of subrogation. Lexington filed a parallel action in the Cherokee Tribal Court for the Eastern Band of Cherokee Indians on November 20, 2012. The state action was removed to federal court based on diversity jurisdiction on December 27, 2012. On Lexington’s motion, the federal court, noting that “the action in Tribal Court has continued apace while this matter is in its early stages,” granted a stay pending the Tribal Court’s ruling on a pending motion to dismiss: “Thus, although this Court has jurisdiction, it will ‘stay its hand’ pending the exhaustion of Tribal Court remedies, despite the fact that the Tribal Court action involves parties who are non-members of the Eastern Band of Cherokee Indians. The reason is simple: the parties do not dispute that the case involves property located within the reservation boundaries; property, moreover, which is involved in tribal gaming.”

In *George v. U.S.*, 901 F.Supp.2d 1179 (N.D. Cal. 2012), the Department of the Interior (DOI), interpreting the Hoopa–Yurok Settlement Act (HYSA), determined that George, a resident of the Square portion of the Hoopa Valley Indian Reservation, did not meet the criteria for enrollment as a member of the Hoopa Valley Tribe. George sued under the Administrative Procedure Act, but the district court, citing the deference due to the DOI’s interpretation of the HYSA, upheld its decision: “[T]he challenged adjudication by the AS–1A occurred pursuant to 25 C.F.R. Part 62 (Enrollment Appeals). The fact that the agency was authorized to make formally adjudicate such appeals is a strong indication that its statutory interpretations are entitled to Chevron deference. … The HYSA does not indicate otherwise. …, we give substantial deference to his interpretation of the applicable statutes and executive actions that give rise to tribal rights.”

In *Tavares v. Harrah’s Operating Co., Inc.*, 2013 WL 1809888 (S.D. Cal. 2013), Tavares had been employed at Harrah’s Rincon Casino & Resort, which was owned and operated by the Rincon San Luiseno Band of Mission Indians (Tribe). After his employment was terminated, he sued, alleging California state law claims of disability discrimination, wrongful termination, failure to reasonably accommodate, and retaliation. Harrah’s appeared specially to remove the case to federal court, where it moved to dismiss on sovereign immunity grounds. The court granted the motion: “Rincon Casino enjoys sovereign immunity over Plaintiff’s employment discrimination claims because it functions as an arm of a sovereign Indian tribe. … Plaintiff has not argued that the Rincon Band waived sovereign immunity or that Congress has abrogated it in this instance. As such, this Court lacks subject matter jurisdiction over Plaintiff’s claims.”
**Hopi Tribe v. City of Flagstaff**, Not Reported in P.3d, 2013 WL 1789859 (Ariz. App. Div. 1) relates to the long-running dispute over a proposed ski resort in the **San Francisco Peaks** of Arizona, considered sacred to the surrounding tribes, that would use waste water for purposes of snow-making. See, e.g., *Save the Peaks Coalition v. U.S. Forest Service*, 2012 WL 400442 (9th Cir.), *Navajo Nation v. U.S. Forest Service* (Navajo Nation II ), 479 F.3d 1024 (9th Cir.2007), modified in *Navajo Nation v. U.S. Forest Service* (Navajo Nation III ), 535 F.3d 1058, 1063 (9th Cir.2008) (en banc) (8–3 decision), cert denied, 129 S.Ct. 2763 (2009). In the instant case, the Hopi Tribe sued under state nuisance law after the City of Flagstaff (City) had entered into a “Reclaimed Wastewater Agreement” under which the resort would purchase reclaimed wastewater from the City to make snow. The trial court dismissed but the court of appeal reversed, reinstated the Tribe’s nuisance claim and remanded to the trial court: “Although environmental concerns similar to those raised by the Tribe in the Arizona common law public nuisance claim in this case appear in the background of the district court’s NEPA analysis, the transactional nucleus of fact at issue in the Navajo Nation litigation was the Forest Service’s administrative procedures, not the underlying environmental concerns.”

In *Phillips v. Salt River Police Dept.*, Not Reported in F.Supp.2d, 2013 WL 1797340 (D.Ariz.), Phillips, proceeding pro se, brought vague claims against the Salt River Police Department, Pima Maricopa Sherriff’s Department, Salt River Casino and an individual alleging violations of federal civil rights laws. The court, observing that federal civil rights actions cannot be brought based on actions taken under tribal law, ordered the plaintiff to file an amended complaint establish an exception to the Tribe’s sovereign immunity from suit.

In *Carden v. Owle Const., LLC*, 739 S.E.2d 627, 2013 WL 1121314 (N.C.App. 2013), Carden, a non-Indian, had been injured near Harrah’s Cherokee Hotel and Casino on the Qualla Boundary in Cherokee, North Carolina. He sued various parties in state court but the case was transferred, by consent to the Cherokee Tribal Court. All claims were subsequently resolved, except Carden’s claim against Owle Construction, which he sought to have transferred back to state court on the ground that Owle, though Indian-owned, was a state-chartered corporation and that there were no Indian parties left in the case to support **tribal court jurisdiction**. The tribal court refused, holding that “Once the jurisdiction of a court or administrative agency attaches, the general rule is that it will not be ousted by subsequent events. This is true even when the events are of such a nature that they would have prevented jurisdiction from attaching in the first instance.” Carden filed a new state court action but the trial court judge dismissed for lack of jurisdiction and the court of appeals affirmed on the grounds cited by the tribal court.

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