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Brian L. Pierson
414.287.9456
bpierson@gklaw.com

The Godfrey & Kahn Indian Nations Law Practice Group provides a full range of legal services to Indian nations, tribal housing authorities, tribal corporations and other Indian country entities, with a focus on business and economic development, energy and environmental protection, and housing development.

Supreme Court rejects Patchak challenge to Gun Lake fee-to-trust acquisition

In *Patchak v. Zinke*, 2018 WL 1054880 (U.S. 2018), Patchak had challenged the decision of the Secretary of the Interior to take land into trust for gaming purposes for the Match–E–Be–Nash–She–Wish Band of Pottawatomi Indians (Tribe). Patchak argued that the Tribe was not "under federal jurisdiction" in 1934 and, therefore, ineligible to acquire land in trust under Indian Reorganization Act (IRA) per the Supreme Court's 2009 ruling in *Carcieri v. Salazar*, 555 U.S. 379 (2009). The district court had initially held that Patchak's suit was barred by the Quiet Title Act, but the court of appeals reversed and the Supreme Court affirmed and remanded. In the meantime, in 2014 the Secretary issued an Amended Notice of Decision concerning the Tribe's fee-to-trust application for two other parcels of land it sought to acquire, expressly confirming its authority under the IRA to take land into trust on behalf of the Tribe. Also in 2014, Congress enacted the Gun Lake Trust Land Reaffirmation Act (Reaffirmation Act), which "reaffirmed" the Secretary's acquisition of the land subject to Patchak's suit and provided, at Section 2(b), that "an action (including an action pending in a Federal court as of the date of enactment of this Act) relating to the land described in subsection (a) shall not be filed or maintained in a Federal court and shall be promptly dismissed." Citing these two developments, the district court granted the government's motion for summary judgment, rejecting Patchak's constitutional challenges to the Reaffirmation Act. The D.C. Circuit affirmed, holding that (1) "[p]articularized legislative action is not unconstitutional on that basis alone," (2) the Gun Lake Act did not unduly infringe Patchak's First Amendment right to petition government or his Due Process rights under the Fifth Amendment because "there is no deprivation of property without due process when legislation changes a previously existing and still-pending cause of action" and (3) the Act was not an impermissible bill of attainder: "While it may be true that Mr. Patchak was adversely affected as a result of the legislation, the record does not show that Congress acted with any punitive or retaliatory intent." On Feb. 27, 2018, a fractured Supreme Court affirmed the decision of the D.C. Circuit Court, holding that Section 2 of the Reaffirmation Act did not violate the constitutional separation of power principles. According to Justice Thomas' plurality opinion:

> The separation of powers, among other things, prevents Congress from exercising the judicial power. ... One way that Congress can cross the line from legislative power to judicial power is by usurping a court's power to interpret and apply the law to the circumstances before it. … The simplest example would be a statute that says, "In *Smith v. Jones*, Smith wins." ... At the same time, the legislative power is the power to make law, and Congress can make laws that apply retroactively to pending lawsuits, even when it effectively ensures that one side wins.

> (As emended by the Court; some citations and quotations omitted)
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> To distinguish between permissible exercises of the legislative power and impermissible infringements of the judicial power, this Court's precedents establish the following rule: Congress violates Article III when it "compels ... findings or results under old law." *Seattle Audubon, supra*, at 438, 112 S.Ct. 1407. But Congress does not violate Article III when it "changes the law." *Plaut, supra*, at 218, 115 S.Ct. 1447.
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> Section 2(b) changes the law. Specifically, it strips federal courts of jurisdiction over actions "relating to" the Bradley Property. Before the Gun Lake Act, federal courts had jurisdiction to hear these actions. See 28 U.S.C. § 1331. Now they do not. This kind of legal change is well within Congress' authority and does not violate Article III.

Concurring justices Ginsburg and Sotomayor joined in the judgment but on the distinct ground that the Reaffirmation Act was a withdrawal of the government's waiver of sovereign immunity in the Administrative Procedure Act. Dissenting justices Roberts, Kennedy and Gorsuch rejected the plurality's premise that Section 2(b) applied to a "class of cases," declaring that "the text and operation of the provision instead make clear that the range of potential applications is a class of one. Congress, in crafting a law tailored to Patchak's suit, has pronounced the equivalent of 'Smith wins."

Selected Court Decisions

In *MacDonald v. CashCall, Inc.*, 2018 WL 1056942 (3rd. Cir. 2018), New Jersey resident MacDonald, after viewing an **internet advertisement for loans** from Western Sky, electronically executed a Western Sky Consumer Loan Agreement (Loan Agreement) and obtained a $5,000 loan requiring a $75 origination fee and bearing a 116.73% annual interest rate over the seven-year term of the loan. MacDonald brought a class action suit against CashCall, Inc.;WS Funding, LLC; Delbert Services Corp.; and J. Paul Reddam (collectively, Defendants), contending that the loan agreement was usurious and unconscionable. Defendants moved to compel arbitration, citing provisions of the agreement that (1) that all disputes be resolved through arbitration conducted by a representative of the Cheyenne River Sioux Tribe (CRST) and (2) delegating questions about the arbitration provision's enforceability to the arbitrator. The district court denied the motion and the Third Circuit Court of Appeals affirmed: "Because the parties' agreement directs arbitration to an illusory forum, and the forum selection clause is not severable, the entire agreement to arbitrate, including the delegation clause, is unenforceable."

In *Citizen Potawatomi Nation v. State*, 2018 WL 718606 (10th Cir. 2018), the Citizen Potawatomi Nation (Nation) and the State of Oklahoma had entered into a gaming compact in 2004 under the **Indian Gaming Regulatory Act** (IGRA) providing for arbitration of disagreements but also permitting either party, "notwithstanding any provision of law," to "bring an action against the other in a federal district court for the de novo review of any arbitration award." When a dispute arose over the Nation's obligation to collect state alcohol sales taxes, the Nation invoked the arbitration provision and ultimately obtained an award in its favor and sued in federal court to enforce it. The district court upheld the award but the Tenth Circuit reversed and remanded, holding that the provision for de novo review was contrary to the Supreme Court's 2008 holding in *Hall Street Associates, LLC. v. Mattel, Inc.*, that the Federal Arbitration Act (FAA) precludes parties to an arbitration agreement from contracting for de novo review of the legal determinations in an arbitration award: "The language of the Compact demonstrates that the de novo review provision is a material aspect of the parties' agreement to arbitrate disputes arising thereunder. Because *Hall Street Associates* clearly indicates the Compact's de novo review provision is legally invalid, and because the obligation to arbitrate is contingent on the availability of de novo review, we conclude the obligation to arbitrate set out in Compact Part 12 is unenforceable."

In *Chissoe v. Zinke*, 2018 WL 919917 (10th Cir. 2018), Chissoe, a member of the Creek Nation, owned an allotment of 8.2 acres of restricted fee land in Oklahoma. Chissoe applied to the Department of Interior (DOI) Bureau of Indian Affairs (BIA) to have the **property taken into trust** pursuant to Section 5 of the Indian Reorganization Act, 25 U.S.C. § 5108, but died while the application was pending. The personal representative of the estate sued to compel the BIA to complete the transfer. The district court upheld the DOI's decision. On appeal the Tenth Circuit held that (1) the DOI's interpretation of the fee-to-trust regulations to bar acquisitions

on behalf of deceased persons was reasonable but the matter would be remanded for a determination whether the property satisfied the requirements for mandatory trust acquisition under the American Indian Probate Reform Act, 25 U.S.C. §2216: "Although § 5108 and the Part 151 regulations do not state explicitly whether the Secretary can take property into trust for a deceased individual, the Secretary adopted a reasonable interpretation of the regulations to prohibit such a fee-to-trust transfer. The regulations require, among other things, that the Secretary consider the applicant's 'need ... for additional land,' 25 C.F.R. § 151.10(b), and 'the amount of trust or restricted land already owned by or for that individual,' id. § 151.10(d). The Secretary reads these requirements as requiring that the applicant be living at the time of the agency's decision. Plaintiff has failed to mount an effective challenge to this interpretation."

In *Dahlstrom v. United States*, 2018 WL 1046829 (W.D. Wash. 2018), the Sauk-Suiattle Indian Tribe (Tribe) terminated Dahlstrom's employment as Health and Social Director for the Sauk-Suiattle Indian Tribe. Dahlstrom sued the federal government under the **Federal Tort Claims Act** (FTCA), contending that he was fired in retaliation for raising concerns about the safety of the vaccines the Tribe's medical team distributed and alleging that the tribal employees who allegedly caused him to lose his job and who escorted him from the reservation were agents or employees of the United States by virtue of the federal government's funding of their employment under the Indian Self-Determination and Education Assistance Act. On the government's motion, the court dismissed certain claims and allowed Dahlstrom to amend his complaint in an attempt to salvage others: "Plaintiff also alleges that his discharge was prohibited by the First, Fourth, Fifth, and Fourteenth Amendments to the United States Constitution and asserts both federal and state law claims arising from these violations….The FTCA's waiver of immunity extends only to circumstances 'where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.' 28 U.S.C. § 1346(b)(1). The Supreme Court has held that the reference to 'the law of the place' means the law of the state where the negligent or wrongful act occurred. Under § 1346(b)(1), immunity is waived only as to state law claims: a federal constitutional tort may not be pursued directly under the FTCA. … To the extent plaintiff is asserting that the United States violated the federal constitution, the FTCA does not apply and the United States has not waived its immunity. To the extent plaintiff is asserting a wrongful termination claim under state law, however, violations of the First, Fifth, and/or Fourteenth Amendments could be used to show that defendants exceeded their discretion and are therefore not protected by the discretionary function exception. … The Court likely has jurisdiction to hear plaintiff's state law wrongful discharge claims against the United States to the extent the termination violated plaintiff's federal speech and/or due process rights. The United States has not, however, waived its sovereign immunity from liability for negligent supervision, negligent training, abuse of process, false arrest, false imprisonment, or the emotional distress arising therefrom."

In *Cayuga Nation v. Zinke*, 2018 WL 1036365 (D.D.C. 2018), one faction of the Cayuga Tribe, styling itself the Cayuga Nation, sued the Secretary of the Department of Interior (DOI) over DOI's decision **to recognize a competing faction**, the "Cayuga Nation Council," as the Tribe's legitimate government for purposes of contracting under the Indian Self-Determination and Education Assistance Act. The district court granted the motion of the recognized faction to intervene in the case.

In *Ute Indian Tribe of the Uintah and Ouray Reservation v. Lawrence*, 2018 WL 941720 (D. Utah 2018), Becker in 2005 had entered into a contract with the Ute Indian Tribe of the Uintah and Ouray Reservation (Tribe) under which Becker would manage the Tribe's Energy and Minerals Department and receive compensation that included a salary of $200,000 and 2% of "net revenue distributed to Ute Energy Holding, LLC from Ute Energy, LLC," tribal entities "capitalized with ... oil and gas interest[s] ... held in trust for the Tribe by the United States." In connection with the contract, the Tribe adopted the Ute Energy Operating Agreement, for which the Tribe received certification from the United States Department of the Interior, Bureau of Indian Affairs, that no federal approval was required because it created no interest in trust lands subject to approval. The parties' contract provided for dispute resolution in the "(i) U.S. District Court for the District of Utah, and appellate courts therefrom, and (ii) if, and only if, such courts also lack jurisdiction over such case, to any court of competent jurisdiction and associated appellate courts" and the Tribe expressly waived "any requirement of Tribal law stating that Tribal courts have exclusive original

jurisdiction over all matters involving the Tribe and waives any requirement that such Legal Proceedings be brought in Tribal Court or that Tribal remedies be exhausted." When a dispute arose, Becker sued in federal court, which dismissed that federal jurisdiction over his state contract law claims was lacking, whereupon Becker sued in state court. After the state court denied the Tribe's motion to dismiss, the Tribe sued in federal court to enjoin the state court suit, but the court dismissed on the ground that it lacked subject matter jurisdiction. The Tenth Circuit reversed, holding that "the Tribe's claim—that federal law precludes state-court jurisdiction over a claim against Indians arising on a reservation—presents a federal question that sustains federal jurisdiction" under §§ 1331 and 1362. On remand, the Tribe moved for an injunction barring the state court from trying Becker's breach of contract claims. After the districted court stayed the federal action to permit the state court action to proceed, the Tenth Circuit directed the court to "exercise its original jurisdiction in accord with the mandate in our decision Ute Indian Tribe v. Lawrence, 875 F.3d 539 (10th Cir. 2017), and decide the Tribe's request for injunctive relief against the state court proceedings." The district court then enjoined the state court proceedings.

In *Stand Up for California! v. United States Department of Interior*, 2018 WL 1092448 (D.D..C. 2018), the Department of Interior (DOI), in the final hours of the Obama administration, approved the application of the landless Wilton Rancheria to take 36 acres of **land into trust** in Elk Grove, California. The acquisition was accomplished by means of a Record of Decision issued by Principal Deputy Assistant Secretary Lawrence Roberts. The Plaintiffs sued, arguing that the DOI had violated the Federal Vacancies Reform Act (FVRA) and the fee-to-trust regulations, 25 C.F.R. § 151.12(c), which, they argued, reserved the final fee-to-trust decision-making authority to the Secretary or Assistant Secretary-Indian Affairs of DOI. The district court granted summary judgment to the government: "Because the authority to make a final fee-to-trust decision is nonexclusive and therefore delegable, and the authority was properly delegated to the Principal Deputy Assistant Secretary, I agree with the Defendants' position that Mr. Roberts exercised authority consistent with Section 151.12(c) and the Department Manual, and that this was not in contravention of the FVRA."

In *Estate of Lovelett v. State*, 2018 WL 993972 (W.D. Wash. 2018), Lovelett was a member of the Confederated Tribes of the Chehalis Reservation (Tribe). After Lovelett died, his estate sued the Tribe, claiming negligent medical care and treatment. The Tribe moved to dismiss, but the court permitted Lovelett's estate to conduct discovery on the question whether the Tribe had waivered its **sovereign immunity**: "Lovelett has advanced a plausible theory that the Tribe waived its sovereign immunity. Lovelett specifically points to the Tribe's contractual and business relationships with private party medical care providers in which the Tribe may have waived its immunity. … Accordingly, in order to address all plausible aspects of the jurisdictional question, Lovelett should have an opportunity to obtain and review the contracts in question. … However, the court may deny jurisdictional discovery if 'it is clear that further discovery would not demonstrate facts sufficient to constitute a basis for jurisdiction,' … or when the discovery request is 'based on little more than a hunch that it might yield jurisdictionally relevant facts.' … In this case, the Court concludes that limited discovery is warranted because open questions remain whether or not the Tribe waived its immunity." (Citations and internal quotations omitted.)

In *LaForge v. Gets Down*, 2018 WL 826380 (D. Mont. 2018), LaForge brought a federal court suit against the attorney who had represented his wife in a Crow Tribal Court divorce proceeding and certain tribal officials. The district court dismissed on **sovereign immunity** grounds but permitted Laforge to amend his complaint against the non-tribal party: "Tribal Court judges remain absolutely immune from suit, in their individual capacities, for acts performed in their judicial capacities under the doctrine of judicial immunity. … Indian tribes, tribal entities, and persons acting on the Tribe's behalf in an official capacity enjoy sovereign immunity against suit unless Congress expressly authorizes the suit or the tribe has waived sovereign immunity. …The Crow Tribe's sovereign immunity bars LaForge's claims against Judicial Defendants in their official capacities."

In *Petition of Reddam*, 2018 WL 794472 (N.H. 2018), Reddam was the owner, president and chief executive officer of CashCall, a lending and loan services corporation headquartered and incorporated in California. Reddam was also the president of WS Funding, a wholly owned subsidiary of CashCall organized as a Delaware limited liability company and with a principal place of business in California. Neither

Reddam, CashCall, nor WS Funding was licensed to issue small loans under New Hampshire law. CashCall and WS Funding contracted with Western Sky Financial, a company wholly owned by an enrolled member of the Cheyenne River Sioux Tribe, which offered **loans to New Hampshire citizens over the internet** at interest rates not permitted under New Hampshire law. The New Hampshire Banking Department (Department) determined that either CashCall, or WS Funding, was the "actual" or "de facto" lender for the payday and small loans, and that Western Sky Financial was a front for the respondents' unlicensed activities and issued a cease and desist order to CashCall, WS Funding, and Reddam. Reddam filed write of certiorari in the New Hampshire Supreme Court, arguing that the Department could not exercise jurisdiction over him personally because he had no significant contacts in the state. The Supreme Court disagreed and denied the writ: "[A]lthough we agree with Reddam that he is not subject to personal jurisdiction in New Hampshire based only upon his potential statutory liability as a control person, we agree with the Department's alternative argument that evidence that Reddam had knowledge of, controlled, and directed the respondent companies' actions that violated RSA chapter 399–A can support a finding that the Department has specific personal jurisdiction over him. … It would be nonsensical to hold that a person could intentionally create a scheme for the purpose of violating the laws of numerous states, control the company that thereafter violated those state laws in accordance with the scheme, yet somehow be shielded from personal jurisdiction in each such state because he did not individually target the particular state's consumers."

In *State of Texas v. Alabama Coushatta Tribe*, 2018 WL 731516 (E.D. Tex. 2018), Congress had enacted the Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act (Act) in 1987. The act expressly prohibited gaming in violation of Texas law. A year later, Congress enacted the **Indian Gaming Regulatory Act** (IGRA). The Alabama Coushatta Tribe sought to conduct gaming activities and sued for a declaratory judgment that the State had no authority regulate its activities. The district court held otherwise and the Fifth Circuit Court of Appeals affirmed in 2003, holding that the Tribe had essentially agreed to forego gaming in order to obtain enactment of the Restoration Act. In 2016, the National Indian Gaming Commission (NIGC) determined that the Tribe was authorized to conduct Class II gaming on its lands under the IGRA and that the Restoration Act did not bar such activities. When the Tribe initiated Class II gaming activities, the State moved for contempt of court sanctions for the Tribe's violation of the 2003 judgment. The district court granted the State's motion, holding that the Restoration Act was not superseded by the IGRA: "The Tribe has not established that Congress intended for the NIGC to interpret the Restoration Act or promulgate regulations pursuant to the Restoration Act. As discussed above, the NIGC's authority flows from IGRA, not the Restoration Act. … Thus, the Fifth Circuit identified a congressional intent that IGRA did not repeal the Restoration Act and that therefore the Restoration Act — and not IGRA — applies to the Tribe's gaming activity. … This Court is bound by Fifth Circuit precedent on this issue and, therefore, is not inclined to hold otherwise."

In *United States v. Webster-Valentino et al*, 2018 WL 722419 (D. Neb. 2018), the Omaha Tribe of Nebraska (Tribe) had asserted claims against the Indian Health Service (IHS) for unpaid contract support costs. When the government eventually settled the claims, the tribal council approved the payment of "bonuses" from IHS funds to the administrator of the Tribe's health center, members of the current tribal council and members of previous tribal council's from 1994 forward (Defendants). The government indicted the Defendants for violations of federal laws prohibiting **conversion of federal funds**, 18 U.S.C. § 666, and conversion of funds of a health care benefit program, 18 U.S.C. § 669, among other charges. The federal district judge accepted the magistrate judge's recommendation in denying the Defendants' motion to dismiss.

In *Stockbridge Munsee Community v. State of Wisconsin*, 2018 WL 708389 (W.D. Wis. 2018), the United States in 1969 had acquired land in trust for the Ho-Chunk Nation (Ho-Chunk) near the community of Wittenberg, Wisconsin, within Shawano County (Wittenberg Parcel), subject to the seller's reversionary interest if Ho-Chunk did not commence construction of housing within five years. No housing construction occurred but the seller formally waived its reversionary interest anyway by quitclaim deed in 1993. Meanwhile, the Stockbridge-Munsee Mohican Tribe (Stockbridge) had opened a casino on its reservation, also located in Shawano County, in 1992. In 2008, Ho-Chunk opened a casino on the Wittenberg Parcel. When Ho-Chunk undertook a major expansion of its Wittenberg casino in 2016, Stockbridge sued the State of Wisconsin, Governor Scott

Walker and Ho-Chunk, contending that Ho-Chunk had acquired the Wittenberg property in trust after 1988, rendering the property ineligible for gaming under the **Indian Gaming Regulatory Act** (IGRA) and that the Wittenberg facility would violate the provision in Ho-Chunk's gaming compact with Wisconsin that "fifty percent or more of the lot coverage of the trust property upon which the [Wittenberg] facility is located,[sic] is used for a Primary Business Purpose other than gaming." The district court had previously dismissed Stockbridge's claims against Ho-Chunk as time-barred, holding that Stockbridge's IGRA-based-claims were subject to a state-borrowed six-year limitation and that the "continuing violation" doctrine did not apply. Stockbridge then moved for leave to amend its complaint to add new claims against both Ho-Chunk and the State. The district court denied Stockbridge's motion to amend, dismissed Stockbridge's claims against Walker and the State as time-barred, denied Ho-Chunk's motion for sanctions and dismissed, without prejudice, the State's state law claim for declaratory judgment that Stockbridge must make revenue sharing payments prescribed in its gaming compact.

In *Slawson Exploration Company, Inc. v. United States Department of Interior*, 2017 WL 7038795 (D.N.D. 2017), the Bureau of Land Management (BLM) had approved Applications for Permit to Drill (APDs) submitted by Slawson Exploration Company, Inc. (Slawson) to develop oil and gas leases underneath Lake Sakakawea in North Dakota within the Fort Berthold reservation of the Mandan, Hidatsa and Arikara Nation (MHA Nation) reservation in North Dakota. The MHA Nation appealed to the Interior Board of Land Appeals (IBLA) and petitioned for a stay of the drilling. The IBLA issued an order granting the stay. Slawson filed a federal court complaint against the United States Department of the Interior and Secretary Ryan Zinke in his official capacity, the IBLA, and IBLA Administrative Judge James Jackson in his official capacity, (collectively, Federal Defendants), challenging the stay issued by the IBLA and requesting an injunction setting aside the IBLA stay order. The BLM, proceeding outside the litigation and within the administrative process, submitted a Petition for Director's Review and Brief in Support, requesting that the Director of the United States' Department of the Interior Office of Hearings and Appeals (OHA Director) review and reverse the IBLA stay, take jurisdiction over the appeal, and render the final decision in the administrative matter. The MHA Nation intervened and moved to dismiss Slawson's federal complaint on the ground that there was no final administrative action reviewable under the Administrative Procedure Act. The court denied the MHA Nation's motion, holding that (1) the BLM decision approving the permit became final when the IBLA failed to act within the statutorily-prescribed 45-day limit, (2) Slawson was entitled to an injunction barring enforcement of the IBLA stay, (3) the "substantial financial costs" that Slawson would incur if it must stop drilling constituted "irreparable injury," (4) the MHA Nation's claim that construction of the project only 600 feet from Lake Sakakawea "threatens the reservation lands, waters and resources" was contradicted by the BLM's findings, and (5) the MHA Nation had no regulatory jurisdiction over Slawson because the project lands were not held in trust for the tribe: "The MHA Nation's Petition for Stay cited one of two exceptions to the general rule outlined in ***Montana*** which allows tribes to regulate non-tribal conduct on fee lands within a reservation when it threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe. … However, this exception only applies when the conduct imperils the subsistence of the tribe or will result in catastrophic consequences for the tribe. … The drilling permit which BLM initially approved for Slawson does not allow Slawson to access any resources held in trust for the MHA Nation. … Slawson argues the BLM has no obligation to enforce or recognize tribal law when making federal decisions affecting non-Indian lands. The Court agrees." (Internal quotations and citations omitted.)

In *Ute Indian Tribe of Uintah and Ouray Reservation v. Lawrence*, 2018 WL 637395 (D. Utah 2018), Becker in 2005 had entered into a contract with the Ute Indian Tribe of the Uintah and Ouray Reservation (Tribe) under which Becker would manage the Tribe's Energy and Minerals Department and receive compensation that included a salary of $200,000 and 2% of the "net revenue distributed to Ute Energy Holding, LLC from Ute Energy, LLC," tribal entities "capitalized with ... oil and gas interest[s] ... held in trust for the Tribe by the United States." In connection with the contract, the Tribe adopted the Ute Energy Operating Agreement, for which the Tribe received certification from the United States Department of the Interior, Bureau of Indian Affairs, that no federal approval was required because it created no interest in trust lands subject to approval. The parties' contract provided for dispute resolution in

the "(i) U.S. District Court for the District of Utah, and appellate courts therefrom, and (ii) if, and only if, such courts also lack jurisdiction over such case, to any court of competent jurisdiction and associated appellate courts" and the Tribe expressly waived "any requirement of Tribal law stating that Tribal courts have exclusive original jurisdiction over all matters involving the Tribe and waives any requirement that such Legal Proceedings be brought in Tribal Court or that Tribal remedies be exhausted." When a dispute arose, Becker sued in federal court., which dismissed on the ground that federal jurisdiction over his state contract law claims was lacking, whereupon Becker sued in state court. After the state court denied the Tribe's motion to dismiss, the Tribe sued in federal court to enjoin the state court suit, but the court dismissed on the ground that it lacked subject matter jurisdiction. The Tenth Circuit reversed, holding that "the Tribe's claim—that federal law precludes state-court jurisdiction over a claim against Indians arising on a reservation—presents a federal question that sustains federal jurisdiction" under §§ 1331 and 1362. On remand, the Tribe moved for an injunction barring the state court from trying Becker's breach of contract claims. The district court denied the motion and stayed the federal action pending resolution of the state court action, holding that exceptional circumstances, as well as the Younger doctrine, warranted the **federal court's deferring to the state court**: "(1) the state court action was filed in December 2014, eighteen months before this action was filed; (2) the Tribe filed this action only after adverse rulings in the state court action; (3) the state court action is ongoing, with a trial set to commence in about three weeks, and the state court has invested significant time and resources in this matter; (4) Judge Lawrence has already addressed and decided most, if not all, the issues this court would be asked to decide in the exercise of its supplemental jurisdiction; (5) Judge Lawrence is well-positioned to decide, or has already decided, the dominant state-law issues governing the parties' claims and defenses, as well as the Tribe's defenses asserted under federal and tribal law; (6) the remaining issues to be decided are best resolved upon a full trial before a jury; and (7) the Tribe has remedies in the state court system to challenge any errors they believe the trial court may have made."

In *Diego K. v. Department of Health & Social Services*, 2018 WL 1023374 (Alaska 2018), an Alaska state trial court had granted a petition of the State Office of Children's Services (OCS) for removal of an Indian child from the parents' custody. The Alaska Supreme Court vacated the order and remanded, concluding that the trial court's order violated rules pertaining to a child in need of assistance (CINA) and the **Indian Child Welfare Act**: "The CINA Rules require that OCS provide the reports to the other parties in advance of the hearings to which the reports relate, providing the parties an opportunity to respond to or rebut the reports. Such notice is essential to due process, which requires that the parents have adequate notice and opportunity to address the reports before the court. In contrast, when OCS offered unsworn statements to support its request for removal findings, the court did not provide the parents with the notice and opportunity required by due process. Instead it told the parents that they could not object because the hearing was 'just a status hearing.' … Because these hearings provided no evidence to the court to support its decision authorizing Mary's removal from her parents' home, it was error to rely upon information from them to grant OCS's request to remove Mary."

In *State Department of Health & Social Services v. Michelle P.*, 2018 WL 794361 (Alaska 2018), the State of Alaska Department of Social Services, Office of Children's Services (OCS), filed a child in need of aid (CINA) petition to adjudicate a three-year old Indian child as a child in need of aid and to grant OCS temporary custody on grounds of incarceration, physical harm, neglect and substance abuse. The trial court dismissed but the Alaska Supreme Court reversed: "[T]he court's jurisdiction over a child who has been adjudicated in need of aid is not dependent upon a disposition order. Alaska Statute 47.10.083 required the court to act in Natalie's best interests and to consider whether immediately returning her to her parents' custody would have been detrimental, which its comments made clear it believed was the case. …Further, CINA Rule 20 provides that '[i]f the court determines that the challenged order violated [**Indian Child Welfare Act**] 25 U.S.C. §§ 1911, 1912 or 1913, the court shall immediately invalidate the order and take other appropriate action which may include dismissing the case and ordering the child returned to the parents.' Given this framework, vacating the removal order does not require, as Morris urges, that Natalie be immediately returned to her parents without consideration for her safety. Based upon its comments at the January 2017 hearing, the superior court believed that Natalie faced a 'substantial and immediate danger or threat of such danger' if she were returned to her parents. Given the time

that has passed since that hearing, the appropriate remedy in this case is remand to the superior court to conduct further proceedings to ensure Natalie's safety."

In *Hopi Tribe v. Arizona Snowbowl Resort Limited Partnership*, 2018 WL 771809 (Az. App. 2018), the Hopi Tribe (Tribe) sued Arizona Snowbowl Resort Limited Partnership, (Snowbowl) under state nuisance law after Snowbowl announced that it would use recycled waste water to make snow at its ski resort in the **San Francisco Peaks** in northern Arizona, an area sacred to the Hopi and other tribes. The Tribe alleged that impurities associated with the waste water would preclude the ceremonial use of objects collected on the Peaks or water from streams fed by snowmelt. The trial court dismissed for lack of standing, but the state appellate court reversed: "Assuming the truth of all well-pleaded facts, we find the Tribe has alleged a special injury sufficient to survive the motion to dismiss."

Indian Nations Practice Group Members

Kathryn Allen, Financial Institutions
Sault Ste. Marie Chippewa Tribe
kallen@gklaw.com

Mike Apfeld, Litigation
mapfeld@gklaw.com

Marvin Bynum, Real Estate
mbynum@gklaw.com

John Clancy, Environment & Energy Strategies
jclancy@gklaw.com

Todd Cleary, Employee Benefits
tcleary@gklaw.com

Shane Delsman, Intellectual Property
sdelsman@gklaw.com

Rufino Gaytán, Labor, Employment & Immigration
rgaytan@gklaw.com

Arthur Harrington, Environment & Energy Strategies
aharrington@gklaw.com

Lynelle John, Paralegal
Menominee Tribe
ljohn@gklaw.com

Brett Koeller, Corporate
bkoeller@gklaw.com

Michael Lokensgard, Real Estate
mlokensgard@gklaw.com

Carol Muratore, Real Estate
cmuratore@gklaw.com

Andrew S. Oettinger, Litigation
aoettinger@gklaw.com

Brian Pierson, Indian Nations
bpierson@gklaw.com

Jed Roher, Tax & Employee Benefits
jroher@gklaw.com

Timothy Smith, Tax & Employee Benefits
tcsmith@gklaw.com

Mike Wittenwyler, Government Relations
mwittenwyler@gklaw.com