GODFREY & KAHN S.C.

Indian Nations Law *Focus*

August 2019, Volume 14, Issue 8

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.

In *Moody v. United States*, 2019 WL 3309394 (Fed. Cir. 2019), the Moodys had entered into five-year farming leases of trust land with the Oglala Sioux Tribe. Issues arose with respect to the **lease** payments owed by the Moodys, and the BIA ultimately canceled the leases and directed the Moodys to vacate. Without appealing the order administratively, they sued the federal government in the Claims Court under the Tucker Act, seeking damages resulting from the cancellation. The Tucker Act permits contract claims against the federal government. The Claims Court dismissed on the ground that the United States was not a party to the leases and the Federal Circuit affirmed: "The theory that the United States is a party to the leases is contrary to the express contractual language, which distinguished between the Secretary/United States 'acting for and on behalf of' the Indian landowners and the parties to the lease—the Oglala Sioux Tribe as the 'LESSOR' and the Moodys as the 'LESSEE.' In *United States v. Algoma Lumber Co.*, … the Supreme Court held that the United States' entry into leases on behalf of an Indian landowning tribe and exercise of its trust responsibilities to Indian beneficial landowners 'does not necessarily involve the assumption of contractual obligations' 'in the absence of any action taken by the government or on its behalf indicating such a purpose.' ... The *Algoma* opinion represents the Court's rejection of the trust theory of liability as a means of holding the United States contractually liable to third parties when it acts on behalf of Indians… Here, there are no alleged facts that would support a conclusion that the United States was acting as anything other than a trustee when approving and managing the leases. Under *Algoma*, the allegations of the complaint are legally insufficient to support a conclusion that the United States was a party to the leases. … the Moodys contend that there were implied-in-fact agreements created between the Moodys and the United States when the BIA told the Moodys (twice) to continue farming the lands after sending the cancellation letters. The BIA does not have general authority to lease land held for the benefit of a tribe unless it receives direct authorization from the tribe. See 25 C.F.R. § 162.207(a) … It is difficult to see how the United States, without specific authorization, could enter into an implied-in-fact contract with the Moodys on behalf of the tribe." (Internal quotations and citations omitted.)

In *Watso v. Lourey*, 2019 WL 3114047 (8th Cir. 2019), Watso, a non-Indian, had two children, CP and CH, eligible for membership in the Red Lake Band of Chippewa Indians and the Shakopee Mdewakanton Sioux (Dakota) Community (SMSC), respectively, through their tribal member fathers. Scott County deputies took custody of CP and CH after a medical clinic reported neglect. Later, pursuant to a petition filed by the SMSC Family and Children Services Department, the children were transferred to SMSC's Child Welfare Office over Watso's objection. SMSC subsequently transferred jurisdiction over CP to the Red Lake Band. Watso and her mother sued Department of Human Services Commissioner Emily Piper, Scott County, SMSC, the SMSC Court, SMSC Judge John E. Jacobson, the Red Lake Band, the Red Lake Band Court, and Red Lake Band Judge Mary Ringhand, alleging that the transfer of custody violated the **Indian Child Welfare Act** of 1978 (ICWA) and their federal constitutional rights because, under the ICWA, jurisdiction over

an Indian child must be exercised by a state court before jurisdiction may be transferred to a tribe. The district court disagreed and dismissed and the Eighth Circuit affirmed: "The ICWA 'establishes exclusive jurisdiction in the tribal courts for proceedings concerning an Indian child "who resides or is domiciled within the reservation of such tribe," as well as for wards of tribal courts regardless of domicile.' … 'It creates concurrent but presumptively tribal jurisdiction in the case of children not domiciled on the reservation.'... There is no conflict between the Manual's requirement that local social service agencies refer child custody proceedings involving Indian children to tribal social service agencies for proceedings in tribal court, and the ICWA's recognition of exclusive or presumptive tribal jurisdiction for child custody proceedings involving Indian children. … The SMSC Court's jurisdiction over C.P. and C.H.'s child custody proceedings is consistent with Public Law 280. Lastly, Watso and Dietrich allege that the absence of a state court proceeding violated their due process rights, based on parents' fundamental right 'to make decisions concerning the care, custody, and control of their children.' … Watso and Dietrich had sufficient notice of the tribal court proceedings. They were heard in tribal court. They have presented no evidence of a due process violation." (Internal citations and quotations omitted.)

In *Navajo Nation v. San Juan County*, 2019 WL 3121838 (10th Cir. 2019), the Navajo Nation and several of its members (collectively, the Navajo Nation) in 2012 had sued San Juan County, alleging that the three election districts for both the school board and the county commission violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and the **Voting Rights Act** (VRA) of 1965. Fifty-two percent of the county's residents were Navajo. The Nation complained that the county had concentrated Navajos in one of the three districts, which was comprised 92% of Navajo members and which had a larger population than the other two districts. The district court denied the county's motion to dismiss, found that the election districts violated the Equal Protection Clause, and awarded summary judgment to the Navajo Nation. It later rejected the county's proposed remedial redistricting plan and appointed a special master to develop a proposed remedial redistricting plan, directed the county to adopt that remedial plan, and ordered the county to hold special elections based on that plan in November 2018. The county appealed but the Tenth Circuit affirmed: "In summary, we find no error in the district court's well-reasoned rulings. First, the district court correctly determined that the 1984 consent decree and settlement order have nothing to do with this action. It therefore properly denied the county's motion to dismiss the Navajo Nation's county-commission claim. Second, the district court didn't err when it ruled that the county lacked a compelling interest to justify the racially drawn boundaries of county-commission District 3. Third, the district court correctly rejected as inadequate the county's justifications for the longstanding and substantial population deviation among the 1992 school-board districts. Fourth, the record supports the district court's factual finding that several of the districts in the county's remedial redistricting plan were predominantly based on race. And it correctly concluded that the county lacked the required good reasons or a strong basis in evidence to justify this race-based line drawing. Fifth, the district court didn't clearly err when it found that the special master's remedial plan wasn't predominantly based on race; nor did it otherwise abuse its discretion in ordering the county to adopt that plan."

In *Williams v. Big Picture Loans, LLC*, 2019 WL 2864341 (4th Cir. 2019), the Lac Vieux Desert Band of the Lake Superior Chippewa Indians (Tribe) formed two business entities under tribal law, Big Picture Loans, LLC and Ascension Technologies, LLC (collectively the Entities) for the purpose of engaging in lending over the internet. Virginia residents who were not members of the Tribe sued the defendants, alleging that loans they had received from Big Picture carried unlawfully high interest rates. The Entities moved to dismiss the case for lack of subject matter jurisdiction on the basis of sovereign immunity as arms of the Tribe. After concluding that the Entities bore the burden of proof in the arm-of-the-tribe analysis, the district court found that the Entities failed to prove that they are entitled to tribal **sovereign immunity** and dismissed. Applying the five-part test prescribed by the Ninth Circuit in *White v. Univ. of Cal.*, 765 F.3d 1010, 1026 (9th Cir. 2014), the Fourth Circuit concluded that the Entities were arms of the Tribe and reversed, giving particular weight to the Tribe's use of revenues to fund government programs: "Here, as the district court recognized, the Tribe would not be directly liable

for a judgment against Big Picture or Ascension. This fact alone has little significance in the analysis. Rather, the relevant inquiry evaluates the extent to which the Tribe depends on these Entities for revenue to fund its governmental functions and other tribal development. … Given that 10% of the Tribe's general fund comes from Big Picture, a judgment against Big Picture or Ascension could in fact significantly impact the tribal treasury, which is at the heart of this analysis, even if it is unclear what the exact repercussions of that impact might be on tribal members and services. Where, as here, a judgment against the Entities could significantly impact the Tribe's treasury, this factor weighs in favor of immunity even though the Tribe's formal liability is limited. … The evidence here shows that the Entities have increased the Tribe's general fund, expanded the Tribe's commercial dealings, and subsidized a host of services for the Tribe's members. Accordingly, the Entities have promoted 'the Tribe's self-determination through revenue generation and the funding of diversified economic development.'" (Internal quotation and citation omitted.)

In *United States v. Flute*, 2019 WL 2895978 (8th Cir. 2019), Flute, a member of the Sisseton Wahpeton Sioux Tribe residing on the Tribe's reservation, gave birth to a baby boy, who died four hours after birth from drugs that Flute had ingested. The government charged her with involuntary manslaughter committed within Indian Country, alleging that she "did unlawfully kill Baby Boy Flute by ingesting prescribed and over-the-counter medicines in a grossly negligent manner," in violation of the **Major Crimes Act**, 18 U.S.C. §§ 1112 and 1153. Flute moved to dismiss the Indictment on the grounds that the charged offense did not cover her conduct, and the district court granted the motion. The Eighth Circuit reversed and reinstated the indictment: "The federal involuntary manslaughter statute criminalizes the killing of a 'human being,' which Congress has clearly defined as including a child 'born alive.' Baby Boy Flute, who died four hours after birth, was a human being for the purpose of the statute. He is thus a victim within the scope of § 1112. No applicable exception for conduct of a mother that causes injuries sustained in utero and resulting in death after birth exists. Flute is thus an appropriate defendant within the scope of § 1112 and may be criminally charged for her conduct of abusing prescription and over-the-counter drugs, ultimately resulting in Baby Flute's death after birth."

In *Johnson v. Oneida Nation Enterprise, LLC*, 2019 WL 3321892 (N.D. N.Y. 2019), Johnson filed a pro se employment discrimination claim under Title VII of the 1964 Civil Rights Act against Oneida Nation Enterprise, LLC (ONE) after she was allegedly subjected to sexual harassment while employed by the defendant. The magistrate judge recommended dismissal for lack of **subject matter jurisdiction**, observing that "Title VII 'expressly excludes American Indian tribes from its definition of covered employers' and that '[t]his exclusion extends to arms and agencies of an American Indian tribe.'"

In *Alegre v. United States*, 2019 WL 3322382 (S.D. Cal. 2019), plaintiffs, descendants of Jose Juan Martinez, had applied for membership in the San Pasqual Band of Mission Indians. The Tribe's **enrollment** committee and general council determined that Martinez was a 4/4 San Pasqual Indian and, on that basis, approved their applications and sent their findings to Fletcher, the then-Superintendent of the BIA Southern California Agency. Fletcher determined that Martinez was not 4/4 Indian and, on that basis, the BIA's Pacific Region Director, Dutschke, denied the plaintiffs' enrollment. Plaintiffs sued Dutschke, current Southern California Agency Superintendent, Moore, and other federal officials in their official capacities, alleging civil rights violations but also sought to hold Dutschke and Moore personally responsible under the Supreme Court's holding in *Bivens v. Six Unknown Named Agents*, which established an implied private right of action for tortious deprivation of constitutional rights against federal officials in their personal capacity. On Dutschke's and Moore's motion to dismiss, the court held that *Bivens* did not apply and that the individual defendants were protected by qualified immunity: "[T]he facts here meaningfully differ from the three *Bivens* cases. … First, the Individual Defendants here are civil servants, unlike the defendants in the three *Bivens* cases. … Second, compared to the overt acts in the *Bivens* cases, the Individual Defendants' official actions were general, rather than specific—here, Individual Defendants allegedly 'failed' to take certain administrative actions, such as failing to review and make a decision (adjudicate) Plaintiffs applications. …Lastly, *Bivens* has yet to be applied in the context of tribal enrollment disputes. … Moreover,

Plaintiffs fail to address why the APA would not preclude their *Bivens* claim. … Although the APA does not provide for either monetary damages (though it does provide 'specific relief,' including money payments) or the right to a trial by jury, both the Supreme Court and the Ninth Circuit have stated that alternative remedial measures without these features may still be adequate. … Because Plaintiffs have not offered any preceding case or judicial opinion that a federal official's failure to notify tribal enrollment applicants of a denial is a 'clearly established' violation of the Fifth Amendment Due Process Clause, this Court finds that Individual Defendants Dutschke and Moore have qualified immunity." (Internal citations and emendations omitted.)

In *Flute v. United States*, 2019 WL 3325353 (D.S.D. 2019), the Flutes sued the United States under the **Federal Tort Claims Act** (FTCA), alleging negligence of the Podiatry Clinic, and specifically by Dr. Horlebein, at the Omaha-Winnebago Public Health Service Hospital (Winnebago Hospital). The court partially dismissed based on Horlebeins' independent contractor status: "Dr. Horlebein is an independent contractor because he was not subject to any day-to-day control by IHS. IHS did not provide daily supervision nor did it control Dr. Horlebein's right to exercise independent medical judgment. … Dr. Horlebein was an independent contractor and not a federal employee. Therefore, this Court lacks subject-matter jurisdiction under the FTCA over actions outlined in the complaint attributable to Dr. Horlebein."

In *Cedar Band of Paiutes v. HUD*, 2019 WL 3305919 (D. Utah 2019), a federal statute permitted the Federal Housing Authority (FHA) to insure mortgage loans to certain borrowers, provided borrowers make a minimum required cash investment (MRI). In 2012, the U.S. Department of Housing and Urban Development (HUD) issued an interpretive declaring that the statute "did not prohibit FHA from insuring mortgages originated as part of the homeownership programs of Federal, State, or local governments or their agencies or instrumentalities when such agencies or instrumentalities also directly provide funds toward the required minimum cash investment." CBC Mortgage Agency (CBCMA), a subsidiary of the Cedar Band of Paiutes, registered with the FHA as a Governmental Mortgagee. Through Chenoa Fund, CBCMA provided **down payment assistance** (DPA) to nonmembers nationwide for mortgage loans insured by the FHA. CBCMA then purchased the first mortgages and sold them on a secondary market. In 2019, HUD issued a "Mortgagee Letter" expressing concern that "certain Governmental Entities may be acting beyond the scope of any inherent or granted governmental authority in providing funds towards the Borrower's MRI in circumstances that would violate Handbook 4000.1, the National Housing Act, and is contrary to established law." The Letter required each Governmental Entity Mortgagee to obtain a legal opinion, including, in the case of CBCMA, that "the Governmental Entity is a federally recognized Indian Tribe operating on tribal land in which the Property is located or to enrolled members of the tribe." Because these limitations were wholly inconsistent with its business model, CBCMA sued and sought to enjoin enforcement of the Mortgagee Letter for failure to comply with the Administrative Procedure Act. The court granted the Tribe and its subsidiary a temporary restraining order: "[T]he 2019 Mortgagee Letter imposes unprecedented, new duties on mortgagees to obtain letters showing that the governmental entity is providing DPA to someone within its own jurisdictional boundaries (and in the case of tribes, to a tribal member) or the DPA will be used toward an FHA insured loan to purchase property within that governmental entity's jurisdiction. The 2019 Mortgagee Letter is more legislative in character than interpretive because it articulates new duties that were immediately imposed on mortgagees for the first time. Therefore, HUD's action in the 2019 Mortgagee Letter should likely have been preceded by notice and comment."

In *People ex rel. Becerra v. Native Wholesale Supply Company*, 2019 WL 2762926 (Cal. App. 2019), Native Wholesale Supply Company (NWS) was a corporation chartered under the laws of the Sac and Fox Nation of Oklahoma (Sac and Fox), headquartered on the Seneca Nation of Indians' (Seneca) reservation in New York and wholly owned by Montour, an enrolled Seneca member. NWS's principal business was the sale of tobacco products produced and packaged by Grand River Enterprises Six Nations Ltd. (Grand River), a Canadian corporation located in Ontario, Canada. NWS imported Grand River's cigarettes and stored them in rented space at one of the following three federally regulated facilities before shipping them to

customers: (a) the Western New York Foreign Trade Zone in Lackawana, New York; (b) the Southern Nevada Foreign Trade Zone in Las Vegas, Nevada; or (c) a bonded warehouse located on the Seneca reservation in New York. Between 2004 and 2012, NWS sold and shipped 98,540 cases of Grand River cigarettes worth $67.5 million to the Big Sandy Rancheria Band of Mono Indians (Big Sandy) in California. NWS used a customs broker located in Woodland Hills, California, to assist with some of the transactions, and paid shipping carriers headquartered in Texas, Nebraska, and New York to deliver the cigarettes. The California Attorney General sued NWS and was granted summary judgment on claimed violations of California's Directory Statute, passed as part of the 1998 Master Settlement Agreement between the states and the major tobacco companies, the California Cigarette Fire Safety and Firefighter Protection Act (Fire Safety Act) and the state's unfair competition law, a permanent injunction precluding NWS from making future sales and attorney fees and expert expenses. The California Court of Appeals affirmed, rejecting NWS' arguments based on alleged lack of personal jurisdiction and the **Indian Commerce Clause**: "As this court previously explained, NWS sold millions of cigarettes to Big Sandy, a tribe with only 431 members, and the cigarettes were in turn sold to the general public. … 'Placing goods in the stream of commerce with the expectation that they eventually will be purchased by consumers in the forum state indicates an intention to serve that market and constitutes purposeful availment' where, as in this case, the income earned by NWS was substantial. … NWS argues the Attorney General's claims are preempted because the Indian Commerce Clause precludes application of state laws (such as the Directory Statute and the Fire Safety Act) to on-reservation transactions between Indians (which NWS believes is the nature of the transactions at issue in this case). … NWS points us to no federal statute, nor are we aware of any, that includes a corporation within the definition of Indian, tribe, or tribal member. … NWS has provided no legitimate basis for concluding it qualifies as a tribal member. It is thus considered a non-Indian for purposes of the Indian Commerce Clause analysis. … We agree with the Oklahoma and Idaho Supreme Courts that the Indian Commerce Clause was not intended to cloak in sovereignty the type of transactions at issue here."

In *Kalispel Tribe and Spokane County v. United States*, 2019 WL 3037048 (E.D. Wash. 2019), the Kalispel Tribe in about 1999 had opened a casino in Airway Heights, an area west of Spokane, Washington and within the aboriginal territory of the Spokane Tribe. The Spokane Tribe later acquired land, held in trust by the United States, two miles from the Kalispel casino, for gaming purposes pursuant to the Two-Part Determination prescribed in the ***Indian Gaming Regulatory Act*** (IGRA) for lands acquired after enactment of the IGRA. The Kalispel Tribe and Spokane County challenged the Department of Interior's (DOI) approval of the casino under the Administrative Procedure Act. The Court granted the government summary judgment: "In weighing detriment to the community, the Department need not find that the casino has no unmitigated negative impacts whatsoever, but instead the Secretary must weigh the benefits and possible detrimental impacts as a whole, 'even if those benefits do not directly mitigate a specific cost imposed by the casino.' … 'Although the IGRA requires the Secretary to consider the economic impact of proposed gaming facilities on the surrounding communities, it is hard to find anything in that provision that suggests an affirmative right for nearby tribes to be free from economic competition.' … The IGRA does not require unanimous approval from local governments, but rather the agency must examine effects on the surrounding community and the Governor of the state must approve. There is no basis in law that would afford more weight to the opinions of the County than those of the cities of Airway Heights and Spokane, or of the Governor of the State of Washington. … Lastly, Kalispel argues that the Department violated the trust relationship with the Kalispel tribe. The Federal Government owes a duty of trust to all tribes; however, the scope of that duty must be established by statute and that trust duty necessarily equally applies to all tribes so the Government may not favor one tribe over another…. In this situation, the Spokane and Kalispel's interests are not aligned. Consequently, since the Department fulfilled its statutory duty to examine the benefits and harm to all effected parties, the Department did not violate the trust relationship." (Citations omitted.)

In *Wilson and Franke v. Alaska Native Tribal Health Consortium*, 2019 WL 2870080 (D. Alaska 2019), Wilson and Franke had been employed as Chief Ethics and Compliance

Officer and Chief Medical Officer, respectively, by the Alaska Native Tribal Health Consortium (ANTHC), an inter-Tribal consortium of federally recognized Alaska Tribes and Tribal Organizations which co-manages Alaska Native Medical Center (ANMC), a tertiary-care hospital that provides medical services in Anchorage. Wilson and Franke sued ANTHC and certain of its officers after their employment was terminated, alleging that the defendants engaged in double billing for certain medical services, billing for services performed by ineligible providers, billing for unauthenticated services and accepting incentive payments from Medicaid and Medicare without satisfying program requirements, as well as retaliatory termination of the plaintiffs' employment, in violation of the False Claims Act. Applying the five-part analysis prescribed by the Ninth Circuit in *White v. University of California*, the district court concluded that ANTHC was an arm of the tribes and entitled to **sovereign immunity** and that retaliation claims under the FCA could not be brought against the individual defendants because such claims could be brought only against employers.

In *Agua Caliente Band v. Coachella Valley Water District*, 2019 WL 2610965 (C.D. Cal. 2019), the Agua Caliente Band (Tribe) sued the Coachella Valley Water District for alleged infringement of the Tribe's water rights under the **Winters doctrine** arising from depletion of the water table due to the defendant's pumping activities. The court dismissed the Tribe's Winters claims with respect to quantity and quality of water and ownership of open subterranean spaces not filled by solid material, between rocks, sand, and other solid soil, where water can be stored (pore space): "Here, the Tribe offers evidence that its water will have higher TDS levels, but fails to provide admissible evidence of any injury to the Tribe or its Winters right. Thus, the Tribe only offers evidence of injury to the water, not injury to the Tribe. … Because the Tribe fails to provide evidence of harm, actual or imminent, to its ability to use water of a sufficient quality to fulfill the purposes of the reservation, the Tribe lacks standing for its water quality claim. … [T]he Tribe presents no evidence of any actual or imminent threat to its ability to store water of any quantity—much less its ability to store an amount necessary to fulfill the purposes of the reservation. Thus, the Tribe presents no evidence of actual or imminent injury to its ownership interest in sufficient pore space to store its federally reserved water. Accordingly, the Tribe lacks standing to seek its requested injunctive relief concerning pore space."

In *Alone v. C. Brunsch, Inc.*, 2019 WL 3022358 (S.D. 2019), a duplex in Pine Ridge on the Oglala Sioux Reservation had exploded after propane entered a joint crawl space between two units through an uncapped gas line, destroying a duplex and killing four inhabitants. Their estates sued the building's propane suppliers, Lakota Propane and Western Cooperative Company, Inc. (Western Co-op), alleging negligence, strict liability, and breach of warranty. After an investigation revealed that work previously performed by employees of the Oglala Lakota Sioux Housing Authority (OLSH) may have caused the accident, Lakota Propane attempted to add OLSH as a third party defendant. The circuit court rejected requests to conduct jurisdictional discovery and dismissed for lack of **subject matter jurisdiction**. The South Dakota Supreme Court affirmed: "Lakota Propane has not identified any federal law that would provide our courts with jurisdiction over its claims. Further, if the State asserted jurisdiction over the complaint, it would infringe upon tribal self-governance. Lakota Propane's claims are asserted against member Indians and a tribal entity and arise from tortious conduct occurring entirely within the Pine Ridge Indian Reservation. *See Williams*, 358 U.S. at 218, 79 S. Ct. 269 (requiring a non-Indian plaintiff to file his claim against member Indians in tribal court under infringement principles). … Lakota Propane is correct that, as a general rule, when conducting its review, a circuit court should give each party an equal opportunity to request discovery on the facts giving rise to a jurisdictional question. However, in some cases the court's threshold inquiry into its jurisdiction may be so narrow and involve such uncontroverted facts as to make discovery unnecessary. … Lakota Propane has not presented any indication that it can uncover evidence that would establish subject matter jurisdiction in state court."

In *Paquin v. City of St. Ignace*, 2019 WL 2931288 (Mich. 2019), Article 11, § 8 of Michigan's Constitution provided that a person who had been convicted of a felony "related to the person's official capacity while the person was holding any elective office or position of employment in local, state, or federal government" would be ineligible to hold elective or appointive office for the following

twenty years. Paquin had previously been convicted of conspiracy to defraud the United States by dishonest means in violation of 18 USC 371, arising out of the misuse of federal funds granted to the tribal police department while Paquin was a member of the Sault Ste. Marie Chippewa Board of Governors. When Paquin was denied the right to run for St. Ignace city council, he sued, arguing that the Tribe was not a "local" government within the meaning of Section 8. The appellate court affirmed judgment in favor of the City but the Michigan Supreme Court reversed: "[T]he relied-upon dictionary actually defines 'local government' as 'the government of a specific local area constituting *a subdivision of* a major political unit (as a nation or state)[.]' *Merriam-Webster's Collegiate Dictionary* (2007), p. 730 (emphasis added). See also *Black's Law Dictionary* (10th ed.), p. 811 (defining 'local government,' in relevant part, as '[t]he government of a particular locality, such as a city, county, or parish; a governing body at a lower level than the state government'). … This omitted language strongly suggests that 'local ... government' be understood as a subdivision of another body of government.' ... The Attorney General argues that, because the Tribe *functions* as a local government, the Tribe *is* a local government under Const. 1963, art. 11, § 8. To agree would be to write language into our Constitution that is not there and that the people of this state did not choose to include. Nowhere in our Constitution does it state that local-government equivalency suffices; the provision simply states 'local ... government.' It is thus irrelevant to note all of the functions that the Tribe provides that are similar to that of, for example, the city of St. Ignace—that the two entities function similarly in some respects does not make them the same."

Indian Nations Practice Group Members

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

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

Jonathan Smies, Litigation
jsmies@gklaw.com

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

Mike Wittenwyler, Government Relations
mwittenwyler@gklaw.com