HOBBS STRAUS DEAN & WALKER

215 SW Washington Street, Suite 200
Portland, OR 97204

T 503.242.1745
F 503.242.1072

HOBBSSTRAUS.COM

MEMORANDUM

October 11, 2023

TO: TRIBAL HOUSING CLIENTS

FROM: Ed Clay Goodman & Cari L. Baermann
HOBBS, STRAUS, DEAN & WALKER, LLP

RE: ***NAIHC Legal Symposium***

This memorandum provides a synthesis of recent developments in housing matters, as well as information presented during the National American Indian Housing Council ("NAIHC") Legal Symposium and Legislative Committee meeting held in Las Vegas on October 4–6, 2023.

I. NAIHC Legislative Committee Meeting

NAIHC held its monthly Legislative Committee Meeting in person on October 4, 2023. **Thomas D. Lozano, NAIHC Board Chair,** and **Natasha John, NAIHC's lobbyist**, presided over the meeting.

a. Budget and Appropriations

On March 9, 2023, the Biden Administration released its $6.9 trillion Fiscal Year ("FY") 2024 budget, the first step in the appropriations process. The budget requests $1 billion for tribal housing, including $820 million for Indian Housing Block Grants ("IHBG"), $150 million for IHBG Competitive grants, $70 million for Indian Community Development Block Grants ("ICDBG"), $7 million for training and technical assistance, and $1 million for Title VI loan guarantees.

The 118th Congress has faced significant obstacles in drafting and passing fiscal year ("FY") 2024 appropriations bills. On September 30, 2023, Congress passed a Continuing Resolution ("CR") to largely continue FY 2023 terms and spending levels for most federal agencies through November 17, 2023 to prevent a government shutdown. On October 3, 2023, the House ousted Kevin McCarthy from the Speakership and Rep. Patrick McHenry (R-NC) is now acting Speaker Pro Tempore. No motion to vacate a House Speaker has ever succeeded before. As such, it is not yet certain how the House will proceed from here, both with regards to voting in a new House Speaker and in passing FY 2024 appropriations bills.

The Senate Committee on Appropriations has passed all appropriations bills out of Committee, and the bills are now awaiting floor considerations. The House has considered a number of appropriations bills but have only passed a couple of the bills thus far. In July 2023,

both the Senate and the House released their respective FY 2024 Transportation, Housing and Urban Development, and Related Agencies Bills ("THUD"). The House THUD bill recommends $1.344 billion for Native American programs, while the Senate version recommends $1.081 billion. Below is a breakdown of the tribal housing amounts listed in the two THUD versions.

Programs	**House THUD**	**Senate THUD**
Indian Housing Block Grants	$1.110 billion	$848 million
Competitive IHBG	$150 million	$150 million
Training and Technical Assistance Grants	$7 million	$7 million
Indian Community Development Block Grant	$75 million	$75 million
Title VI Loan Guarantee	$2 million	$1 million
Section 184 Loan Guarantee	$1.5 million	$10 million
Native Hawaiian Housing Block Grant (NHHBG)	$22.3 million	$22.3 million
Tribal HUD Veterans Affairs Supportive Housing (HUD-VASH)	$5 million	$7.5 million

b. Tribal Housing Legislation

Native American Housing Assistance and Self-Determination Act of 1996 ("NAHASDA").

On July 27, 2023, the Senate approved an amendment, by a vote of 86-11, to the National Defense Authorization Act ("NDAA") that would reauthorize the NAHASDA. Subsequently, the Senate voted to approve the NDAA with the NAHASDA amendment attached. The amendment language contains updates to a number of items in the NAHASDA statute that are beneficial to Tribes, which we reported on in our memorandum of July 20, 2023. A copy of the Senate NAHASDA amendment can be found here.

Because the NDAA is a "must pass" bill, having the NAHASDA reauthorization attached to the Senate version of the NDAA is very good news. The House has already passed its version of the NDAA, but that version does not contain a NAHASDA reauthorization. The next step will be a conference between the House and Senate to negotiate a final version of the NDAA, which they will release in a conference report. Whether the NAHASDA amendment remains after the conference is uncertain. The fact that the amendment was passed in the Senate on a strongly bipartisan vote will be helpful in that process. Tribal advocates will need to keep a close eye on the conference and continue to advocate to leadership in the House and Senate that Congress keep the NAHASDA reauthorization in the NDAA. One participant noted that part of the challenge is that because the NAHASDA was attached to the NDAA, it is being revised by Senators who have little to no experience with Native Americans or housing. Tribal advocates can support the passage of NAHASDA as an amendment to the NDAA by highlighting the NAHASDA provisions that support veterans.

The NAIHC Chair, other board members, and staff will continue to advocate that the House pass the NDAA with the NAHASDA amendment attached to it. NAIHC is still working with members of the House Financial Services Committee, the Senate Committee on Indian Affairs, and the Senate Committee on Banking, Housing, and Urban Affairs to advocate for the NAHASDA reauthorization.

Native American Rural Homeownership Improvement Act ("NARHI Act"). The NARHI Act, re-introduced in 2023 as part of the Rural Housing Service Reform Act of 2023 (S. 1389), would provide $50 million from the USDA Single Family Home Loan Program to Native Community Development Financial Institutions to provide home loans in tribal communities. It would also expand the USDA 502 Program, a demonstration project currently operating only in South Dakota. In addition, it would authorize an operating grant for Native CDFIs who re-lend under this program and would appropriate $1 million annually for technical assistance to Native CDFIs. Senator Rounds and Representative Tom Cole (R-OK), Co-Chair of the Native American Caucus, have been advocating strongly for the bill. On May 1, 2023, it was referred to the Committee on Banking, Housing, and Urban Affairs.

Tribal HUD-Veterans Affairs Supportive Housing Program. The Tribal HUD-VASH program, introduced in 2022, aimed to codify a tribal housing initiative between the U.S. Department of Veterans Affairs ("VA") and the U.S. Department of Housing and Urban Affairs (HUD). The Tribal HUD-VASH program is also included in the NAHASDA amendment attached to the NDAA. In addition to making the Tribal HUD-VASH program permanent, the NAHASDA bill would ensure that at least five percent (5%) of all HUD-VASH vouchers are set aside for tribes and tribal housing authorities.

The HUD-VASH program pairs recipients of HUD housing vouchers with VA case managers and supportive services to provide rental and housing assistance to permanently house homeless and at-risk veterans in Indian Country. In 2014, HUD developed a pilot HUD-VASH program which provided rental assistance and supportive services to Native American veterans who were homeless or at risk of homelessness living on or near a reservation or other Indian areas. The Tribal HUD-VASH program would allow tribes to provide more tailored services to their tribal veterans and have more flexibility in how the program is run. An additional benefit for tribes/TDHEs is that it would be a new source of rental subsidy outside of IHBG funding. The services would also be built into grants from the VA.

For project-based rental assistance under Tribal HUD-VASH, the rental assistance is attached to units owned and operated by tribes/TDHEs. IHBG funds cannot be used to subsidize units. In contrast, for tenant-based rental assistance, the rental assistance follows the veteran to rent the unit of their choice that meets program guidelines. The household has 120 days to locate a unit on or around reservation in the service area defined by the tribe or TDHE. The tenant-based program can be more costly for tribes because the rental assistance they provide to veterans is then provided to private lenders. However, in contrast, project-based assistance allows tribes to give rental assistance to veterans who then rent directly from the tribe or TDHE, allowing the tribe or TDHE to keep the assistance within the tribe.

Tribal Trust Land Homeownership Act (S. 70/H.R. 3579). The Tribal Trust Land Homeownership Act ("TTLHA") bill sets forth requirements for the processing of a proposed residential leasehold mortgage, business leasehold mortgage, land mortgage, or right-of-way document by the Bureau of Indian Affairs ("BIA"). Additionally, the bill sets forth requirements for the BIA regarding (1) response times for the completion of certified title status reports, (2) notification of delays in processing, and (3) the form of notices and delivery of certain reports.

The TTLHA currently has a number of bipartisan cosponsors: Senator John Thune (R-SD), Senator Tina Smith (D-MN), Senator Rounds, Senator Tester, and Representative Dusty Johnson (R-SD). Notably, the TTLHA would establish timeframes for the realty and land title process. On July 18, 2023 the Senate TTLHA bill (S. 70) passed the Senate without amendment by unanimous consent.

Native American Direct Loan Improvement Act of 2023 (S. 185). The VA Native American Direct Loan ("NADL") program allows eligible Native American veterans to buy, build, or improve a home on federal trust land. The NADL may also be used to refinance an existing loan to reduce the interest rate. The S. 185 bill addresses some of the issues found in a U.S. Government Accountability Office ("GAO") report (#GAO-22-104627) on the effectiveness of the NADL program. The bill would also provide funding for Native CDFIs to expand outreach for the program to increase veteran participation. Additionally, the bill would adopt the re-lending model through Native CDFIs, which would provide Native CDFIs with more flexibility to use the funding in a way that fits Native communities. The NADL bill was considered by the full Senate at the end of April, but the process stalled before the bill was passed. Sponsors of the bill will try to increase support before bringing it to the Senate floor again.

Unlocking Native Lands and Opportunities for Commerce and Key Economic Developments Act of 2023 (S.1322) ("UNLOCKED Act"). Senator Brian Schatz (D-HI), Chairman of the Senate Committee on Indian Affairs ("SCIA"), and Senator Lisa Murkowski (R-AK), Vice-Chairman of the SCIA, introduced the UNLOCKED Act on April 26, 2023. The bill would amend the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 ("HEARTH Act"), 25 U.S.C. § 415, to authorize all federally recognized tribes to issue leases of up to 99 years and affirm tribal authority to issue rights-of-way. The Unlocked Act is intended to eliminate barriers to tribal infrastructure and economic development projects. Vice-Chairman Murkowski stated that "[i]f enacted, Congress will no longer have to pass stand-alone legislation to allow for such long-term leasing as it has done 59 times since 1955 or [force tribes to] wait for BIA to approve rights of way applications." Our July 20, 2023 housing memorandum includes a more thorough discussion of the provisions of the UNLOCKED Act.

c. Other Matters

The NAIHC Legislative Committee meetings will continue to be held on the first Thursday of each month via Zoom. NAIHC will hold its Annual Convention in Washington D.C. on February 5–7, 2024.

II. NAIHC Plenary Session

NAIHC held a Plenary Session on October 5, 2023. **NAIHC Board Chair Lozano; Joe Diehl, NAIHC Interim Executive Director; and Rulon Pete, Las Vegas Indian Center Executive Director** gave opening remarks.

Navajo Nation Attorney General Ethel Branch gave a presentation on human rights law. She noted that housing is a human right and is the basis for stability and security for families. AG Branch noted that the U.N.'s Universal Declaration of Human Rights recognized adequate

housing as a human right. Under that declaration, to be adequate, housing must meet the following criteria:

1. Security of tenure
2. Availability of services, materials, facilities, and infrastructure
3. Must be affordable
4. Must be habitable
5. Must provide accessibility
6. Location should provide access to employment, healthcare, schools, etc.
7. Should be cultural adequacy

She then applied these factors to Navajo Nation and Indian country generally, and noted that housing for Native peoples in the United States fails to meet these standards.

- Location: There are many of polluted and environmentally dangerous areas (power plants, uranium mining and disposal) on the Navajo reservation. Dine people have 2 – 4 times higher rates of various cancers than non-Hispanic whites.
- Availability of services, materials, infrastructure: There is lack of access to water in homes (no piped water to many homes, 1% of homes lack indoor plumbing [compared to 0.4% in non-Hispanic whites]). Similarly, 30% of homes lack access to electricity. Lack of cellphone and two-way radio access.
- Security of tenure: 16,000 Navajo Tribal members were forcibly removed from their homes for development of subsurface mineral resources on the reservation.
- Habitability: There are numerous superfund sites as well as uranium mines on the Navajo Reservation that pose a significant health threat.

AG Branch also references the Native American Rights Fund (NARF) report on Native voting rights, specifically noting that adequate housing is essentially to voting rights for a couple of reasons:

- Lack of housing adversely impacts right to vote because you often need an address in order to register to vote.
- Further, without a stable address, you are not likely to get ballots delivered to you, or information regarding when and where to vote.

Stanford Lake, Project manager of Hoogan LLC, gave a presentation on tribal efforts to develop residential housing. He noted the high cost of building and repairing houses, the delays in obtaining building materials, and environmental issues (i.e. heavy snow fall) that create delays in the construction. To overcome these obstacles, he remarked on the importance of preparing building plans ahead of time and using highly trained engineers to develop adequate designs.

a. HUD programs

HUD Associate Deputy Assistant Secretary Gary Cooper joined the Plenary Session virtually and provided an overview of the funding that HUD provided to tribal housing in 2023.

1. ICDBG Regulations Tribal Consultation Comment Deadline Extended to **1/30/2024**

HUD is planning to start the rulemaking process to update the Indian Community Development Block Grant ("ICDBG") program regulations (24 CFR 1003). In accordance with HUD's Tribal Consultation Policy, the Office of Native American Programs (ONAP) is seeking Tribal feedback on these regulations, which have not been updated in nearly two decades. HUD is seeking comments regarding all aspects of the ICDBG program and regulations and is particularly interested in receiving feedback on the following areas:

- Eligible and ineligible activities (24 CFR 1003.201);
- Area ONAP allocations of ICDBG funds (24 CFR 1003.101);
- Compliance with the primary objective (24 CFR 1003.208);
- Rating factors included in the Notice of Funding Opportunity (24 CFR 103.303);
- ICDBG Imminent Threat Grants (24 CFR 1003 subpart E); and
- Reporting requirements (24 CFR 1003.506).

Comments can be submitted via email to consultation@hud.gov. Comments must be submitted by **January 30, 2024**. Formal Tribal consultation sessions are forthcoming and will be announced soon.

2. HUD ONAP Housing Summit

NAIHC and HUD are hosting the HUD ONAP National Tribal Housing Summit on October 31–November 2, 2023 at the Intercontinental St. Paul Riverfront in St. Paul, Minnesota. The National Housing Summit will provide a forum for training, exchanging ideas, consulting on upcoming issues, and developing best practices for models that implement and sustain effective affordable housing programs under NAHASDA. The theme of the National Summit is "Inspiring Ideas in Indian Housing." More information can be found here.

b. NAHASDA Reauthorization Efforts and the National Defense Authorization Act

Dave Heisterkamp, an attorney who works with the United Native American Housing Association (UNAHA), spoke on UNAHA's advocacy efforts on NAHASDA reauthorization. He noted that while earlier NAHASDA reauthorizations were smooth, the intensification of partisanship has made it much more difficult to get NAHASDA Reauthorization.

This year, a NAHASDA Reauthorization bill passed out of Senate Committee on Indian Affairs. Rather than have it proceed as a standalone bill (and likely get sidelined in favor of much more high-profile legislation, this bill was attached to the Senate version of the National Defense Authorization Act (NDAA), a "must pass" bill. That amendment passed overwhelmingly in the Senate (86-11) with strong bi-partisan support, and is part of the Senate NDAA. 86-11.

However, the House passed version of NDAA version did not include NAHASDA. Thus, the effort is now to focus on the conferees from the House, who will be key to getting the NAHASDA bill into the final, negotiated version of the NDAA.

In doing so, NAHASDA advocates have had to work in a different space than usual – because housing issues are not usually discussed in the context of defense bills. Thus, advocates have had to focus on the elements of NAHASDA that are related to defense and to veterans: Focused on parts of NAHASDA that were relevant to defense: HUD VASH benefits veterans; re-establishment of old drug elimination program. Whatever the final bill that comes out of the conference, that is the bill that is voted on by House and Senate – no amendments allowed.

c. Panel discussion: current legal issues in Indian Country.

Ed Clay Goodman, Partner at Hobbs Straus Dean & Walker; Sylvia Wirba, attorney; and Xavier Barraza, attorney, joined a panel to discuss current legal impacts in Indian Country. The panel was moderated by **Natasha John, the NAIHC lobbyist**.

The panel began by discussing the most significant and practical NAHASDA provisions included in the amendment to the NDAA in terms of helping their clients build more and better housing in tribal communities. One key provision raises the *de minimus* amount to $7,500 for procurement. Another key NAHASDA component is the drug elimination program, which provides grant funding to curb drug use and sales in reservation housing, additional police resources, housing counseling, and community gathering events. Mr. Goodman noted that the NAHASDA amendment would also limit and consolidate the requirements for the environmental review and only require TDHEs to meet the NAHASDA environmental review requirements if there are multiple federal funding sources involved. This provision is intended to address issues with the current environmental review process when there are multiple federal funding sources involved, which requires tribes and TDHEs to meet the varied environmental review responsibilities of each federal agency. Mr. Goodman noted three other important NAHASDA provisions:

- A provision that would allow recognition of student rental housing vouchers in tribal housing programs;
- A provision increasing the maximum rent allowed in IHBG funding, which is currently set at 30% of a tenant's income; and
- A provision allowing TDHEs to combine funding from the Indian Health Service (IHS) with HUD funding for the construction of sanitation facilities to address water and sanitation issues as it relates to housing.

The panelists also discussed the effectiveness of NAHASDA in 2023, noting the beneficial impacts that NAHASDA funding has had in providing housing to tribal members. They noted that the self-determination provisions of NAHASDA are significant improvements to the pre-NAHASDA housing programs provided to tribes. NAHASDA allows tribes to have more flexibility in providing culturally tailored housing to meet their own tribal needs, instead of only being able to provide HUD-dictated cookie cutter housing programs.

The panel shared ideas on the costs and benefits to converting the NAHASDA into a full-blown self-governance law. They noted that current programs require TDHEs to obtain federal review and approval of numerous steps within housing programs. Obtaining federal agency approval often takes a significant amount of time, causing delays in tribal projects. Federal approval also allows the federal agencies to impose unreasonable or restrictive requirements on

tribes. Turning NAHASDA into a self-governance law would remove some of these obstacles. However, Mr. Goodman noted that HUD programs are not set up the same way that BIA, Bureau of Indian Education (BIE), and IHS programs are set up, so TDHEs would not be able to obtain federal funding for contract support costs for HUD programs.

The panel discussed why the use of the Section 184 Indian Home Loan Guarantee program is not as robust as could be, and what could be done to increase the program's use. They noted that while lenders have become more comfortable working in Indian country, lenders are still hesitant because of their unfamiliarity with loans made in Indian country and on trust land. One way to increase the amount of lending in Indian country is to increase the number of Native Community Development Financial Institutions Fund (CDFI) organizations, which can provide lending in a manner more tailored to tribal needs. Mr. Goodman noted that there is still a lot of work to be done in educating lenders on the intricacies of the Section 184 loan and how it is different from traditional lending. For example, because of lenders' lack of knowledge about the Section 184 program and tribal lands, the lenders often try to impose requirements that do not fit with tribes (i.e. requiring a traditional mortgage, instead of a leasehold mortgage, on trust land).

The panel also provided remarks on what legal issues they are seeing in their representation of tribal housing entities coming out of the COVID-19 pandemic. Employment and human resources issues have continued to pop up, such as the difficulties with combining hybrid and remote work. Mr. Goodman remarked on the issues raised by the increase in employees working remotely in other states, causing TDHEs to need to figure out liability and remote access issues. Another continuing issue is the protection of personnel health issues, and what step tribes and TDHEs need to take to be protected from liability.

The U.S. Supreme Court will likely decide a case in October, *Loper Bright Enterprises v. Raimondo,* which challenges the "Chevron Deference Doctrine." The Chevron Deference Doctrine comes out of *Chevron U.S.A. v. Natural Resources Defense Council*. The Chevron Deference Doctrine compels federal courts to defer to federal agencies' interpretations of ambiguous or unclear federal statutes when a federal agency is in charge of interpreting a statute or regulation and there is an ambiguity. It is expected that the Court will overturn or severely limit the doctrine in the *Loper* case. The argument against that deference is that it takes away too much power from the people. The federal agencies are made up of career employees who have no accountability to the people. The argument on the opposite side is that it is very inefficient to have Congress micromanaging federal programs, and removing the deference could paralyze the government. One other issue raised by the *Loper* case is that corporations are lobbying for the end of deference in order to remove regulatory restrictions, which could severely impact environment.

III. Breakout Sessions

We presented at or attended several of the relevant breakout sessions at the Legal Symposium and report on them below. NAIHC will provide the materials used for each breakout session on its website.

a. Active Shooters: Developing an Effective Active Shooter Policy

Ed Clay Goodman, Partner, and Cari L. Baermann attorney, at Hobbs Straus Dean & Walker, gave a presentation on developing an effective active shooter policy as a means of addressing the increase in shootings at places of employment, housing developments, and other tribal areas.

In 2022, 50 active shooter incidents occurred in 25 states. In 2022: 94% of active shooters were male; in 48% of incidents, the shooter had a known connection to either the location and/or victim(s); and 58% of shooters were apprehended at the scene. Implementing an active shooter policy can help save lives, build confidence, and mitigate risk. Safety preparedness and training are key elements in an emergency plan.

There are six core components found across Active Shooter Policies: Organization; Delegation; Notification/Communication; Evacuation and Response; Recovery; and Training. It is important that any active shooter policy include a list of contact information for first responders, employees, and other key individuals. It is also critical to include a section outlining the assignment of responsibility that makes it clear who will be responsible for each task during an active shooter emergency (i.e. who should contact first responders, who should account for all employees, etc.). Along similar lines, the policy should clearly address the methods and timing for communicating with first responders, employees, visual/hearing impaired individuals, etc., so that the TDHE can notify everyone in as clear and efficient a manner as possible.

TDHEs should consider the potential liability issues raised by implementing an active shooter policy. Issues to consider include: personnel issues related to privacy, discrimination, workplace safety (e.g. making sure not to discriminate against a certain race when categorizing potential active shooters); Second Amendment/Indian Civil Rights Act issues related to the right to bear arms; issues raised under the Violence Against Women Act (VAWA) issues (e.g. whether there should there be safety plans for domestic violence victims); and a TDHE's potential liability for harm if an active shooter event happens and the TDHE has not taken any proactive steps to handle the event, or conversely if a TDHE has taken steps that were not sufficient.

A copy of our presentation slides is attached to this memo. If you would like additional information on implementing an active shooter policy, please reach out to us at the contact information included at the end of this memo.

b. HEARTH Act: Creating and Implementing a Tribal Lease Law

Mr. Goodman and Ms. Baermann gave a presentation on creating and implementing a tribal lease law under the Helping Expedite and Advance Responsible Tribal Homeownership Act, Pub. L. No. 112-151 (2012) ("HEARTH Act").

The HEARTH Act authorizes any tribe, at its own option, to lease its tribal trust land without Secretary of Indian Affairs ("Secretary") approval. However, a tribe must first adopt an ordinance governing the leasing process, which is initially subject to approval by the Secretary. The HEARTH Act authorizes tribes, under approved tribal leasing ordinances, to grant surface

leases for the following types of land: agricultural; business; educational; public; recreational; religious; residential; and wind and solar resources. The HEARTH Act only applies to Tribal land and does not apply to lands held in trust for individual Indian landowners or leases for exploration/development/extraction of any mineral resources.

Removing the requirement for BIA review/Secretarial approval of leases can significantly reduce the time to execute and approve leases. However, the burden of managing and processing leases then falls on a tribe, which can be costly given that there is no funding available to cover the administrative costs of implementing a tribal leasing ordinance.

More details on tribal leasing ordinance requirements, and the process for obtaining Secretarial approval of the ordinance, are laid out in our slides, attached to this memo. If you would like additional information on implementing an active shooter policy, please reach out to us at the contact information included at the end of this memo.

c. Improving the Tax Credit Program—State Agency Advocacy Efforts

Trent Rogers, Travois Senior Project Manager, gave a presentation of the Low-Income Housing Tax Credit (LIHTC) program and state agency efforts to improve the program.

The federal government issues tax credits through the LIHTC program to state and territorial governments. State housing agencies then award the tax credits to private for-profit and non-profit developers (including tribes and TDHEs) to construct, rehabilitate, or acquire and rehabilitate qualified low-income rental housing. The LIHTC program allows tribes and TDHEs to leverage their existing funding to access additional tax credits for the acquisition, rehabilitation, or new construction of rental housing targeted to lower-income households. Tribes and TDHEs can leverage additional funding by partnering with third party investors to create a partnership. The partnerships are often set up so that the tribe or TDHE develops and manages the housing, while the investor invests money for the purpose of developing the housing and then receives tax credits in return.

The state agencies each have their own LIHTC programs through which entities participate in and receive funding from the LIHTC program. Each state publishes a qualified allocation plan (QAP) that outlines the application process, scoring criteria, and the design and compliance requirements. Each state agency holds annual or biannual formal public comment periods over the QAP. The state agencies will issue redlines of the QAP with proposed changes and requests for public comments. There is also a tribal set-aside for some of the scoring criteria, such as exempting tribes from scoring criteria that priorities some geographic areas in which there may not be any tribal communities.

Arizona, California, and New Mexico have been the most amenable to changes to their QAP to create set-asides for tribes. The tribal set asides in these states have their own scoring criteria for tribes or exempt tribes from certain criteria, which allow tribes to have a greater chance of being awarded LIHTC funding. Oregon, North Dakota, and South Dakota each provide around 20% of the state's LITHC funding to tribes. Nevada provides 10% of the State's LIHTC funding to tribes. Minnesota and Wisconsin do not have a tribal set aside but have awarded LITHC funding

to tribal projects. Tribes will benefit from advocating for larger tribal set-asides or for separate scoring criteria for tribes.

d. Treasury's Tribal Housing Updates

Josh Jackson, Policy Advisor at the U.S. Department of the Treasury ("Treasury") Office of Tribal and Native Affairs provided an update on Treasury's Tribal housing work, including the Homeowner Assistance Fund (HAF).

1. HAF Program

The American Rescue Plan Act of 2021 ("ARP Act") provides approximately $498 million in funding to tribes for the HAF Program. This HAF Program provides mortgage assistance to homeowners to prevent the foreclosure or post-foreclosure eviction of a homeowner due to the COVID-19 pandemic. Funding for the HAF Program is allocated through the Treasury for distribution. Allocations are based on the IHBG formula for FY 2021. Tribes can amend either their HAF plan or their budget by contacting Treasury.

Tribes must verify that a person applying for the HAF assistance is the actual homeowner. One participant asked what documents a TDHE would need to prove self-certification of the homeownership. Mr. Jackson responded that Treasury would likely look to the tribe's practices for their community and would want the tribe or TDHE to maintain documentation of any self-certification to include in their HAF Program audit. Tribal participants raised concerns about the Treasury's reporting requirements, tedious online platform for submitting reports, and difficulties with receiving a response from Treasury. Mr. Jackson commented that tribes can contact Treasury's Office of Tribal and Native Affairs, which will in turn work with Treasury to help address these issues and concerns.

2. The State and Local Fiscal Recovery Funds

The ARPA authorized the Coronavirus State and Local Fiscal Recovery Funds (SLFRF), which provides $350 billion in assistance to state, territory, local, and tribal governments, of which $20 billion is reserved for tribal governments. Treasury has released updates to the frequently asked questions (FAQs) of the SLFRF Final Rule.

The updated FAQs include a number of new and revised FAQs. In particular, FAQs 2.14 and 4.9 have been updated to enable state, local, and tribal governments to use SLFRF funds for the full value (including the principal) of long-term affordable housing loans including LIHTC loans. Those FAQs also expand presumptively eligible uses for affordable housing. Specifically, for tribal governments, affordable housing projects are eligible uses of SLFRF funds if they would be eligible for funding under the IHBG program, the ICDBG program, or the BIA HIP. Tribes can use the SLFRF to supplement HAF funds or other federal funding sources. For general questions, please email SLFRF@treasury.gov.

3. Local Assistance and Tribal Consistency Fund (LATCF)

The LATCF provides $2 billion to eligible tribal governments and revenue sharing counties as a general revenue enhancement program, with allocations based on a recipient's economic conditions. LATCF monies are distributed in two (2) tranches, for each of fiscal years (FY) 2022 and 2023. For tribal governments, the LATCF sets aside $250 million for each FY 2022 and 2023, for a total set-aside of $500 million. The purpose of the LATCF is to provide support for general revenues for costs incurred by the recipient on or after March 15, 2021. Funds are available to recipients until expended or returned to Treasury.

Recipients have broad discretion on the use of LATCF monies; recipients are permitted under statute to use the monies for "any governmental purpose" other than lobbying activities. Eligible uses include those services and expenditures traditionally provided or made by a government (including, e.g., the provision of health and education services, capital expenditures in infrastructure and land, and investments in activities undertaken by tribal enterprises).

Further information can be found here.

e. Supportive Housing: Solution to Ending Cycles of Homelessness in Families

Brigid Korce, BeauxSimone Consulting Supportive Housing Consultant, provided an overview of supportive housing as a solution to providing trauma-informed housing and supportive services to families experiencing homelessness or housing instability. Ms. Korce noted some of the causes of homelessness, including poverty, domestic violence, disabilities, and trauma.

Supportive housing is a cost-effective, outcome-driven solution to ending homelessness by providing individuals with wrap-around services. These services can address addition, mental health, poverty, and trauma. The supportive housing model is structure so that individuals are provided with housing along with being provided the supportive services, but participation in the supportive services is not a condition of receiving housing. There is a fair amount of federal funding available to entities that provide supportive services along with providing housing. Ms. Korce emphasized the significant impact that supportive housing can have in helping homeless individuals find and stay in stable housing.

f. Opioids and Indian Housing

Nickolaus Lewis, a representative of the Northwest Portland Area Indian Health Board (NPAIHB) and Lummi Tribal Councilmember reported on efforts of the Lummi Tribe and the NPAIHB to deal with the ongoing scourge of opioid use in Indian Country. Earlier this summer there was a National Tribal Opioid Summit hosted by the Tulalip Tribes. Tribal leadership from around the country were joined by representatives from Congress and White House.

At the summit, the question was posed: what does tribal leadership need to prevent opioid use and overdoses in the community? There were a number of concepts discussed in response to that question, including the following:

- 70% of people struggling with opioid addiction identified housing as a need.
- Housing is a key "social determinant of health"
- Tribes need intertribal mobile units to address specific needs. These units would offer medical treatment, cultural preservation, housing assistance and mental wellness support.
- The Summit participants identified the following types of housing that are needed to help with persons dealing with opioid addiction:
  - Recovery (including low barrier, e.g., not requiring sobriety – but this is a point of significant debate, because of the risks that active drug using presents)
  - Transitional
  - Permanent
  - Families, children, extended relatives
  - Wraparound and social services
- The Summit participants also addressed the following obstacles to addressing housing needs
  - Timing: it is difficult to find safe or temporary housing, as well as detox centers, that are readily available when needed, and they are often needed on an emergency basis.
  - The shortage of safe, habitable homes that can function as transitional housing
- Tribes need to develop integrated treatment models (which includes housing as part of treatment)
- Tribes should develop housing that is culturally-specific, including tribal based practices and ways of knowing.
- Tribes need to be creative about developing care and support services funding:
  - Federal funding needs to be less restrictive
  - Behavioral health providers bill Z codes

Councilman Lewis then discussed some of the ideas that Summit participants discussed as potential means of addressing these needs. He first spoke about 105(l) leasing as a means of funding supportive housing. The Lummi Tribe took out a significant loan to construct a medical facility, and are going to lease the building to the federal government to cover the debt service. During that process, they raised the issue of using the 105(l) lease for supportive housing, because it is a health-related service. They are still exploring this option. The Lummi Nation is also using third-party revenues from Medicare/Medicaid to pay for staffing at supportive housing. In addition, some of the creative solutions form the community involved the following:

- Establishing transition housing that provides jobs and collects rent but pays rent money back to the participants upon graduation from treatment
- Prioritize housing as part of their care and support services, following housing-first or low-barrier models
- Developing holistic, wraparound approaches to treatment, including resources to house people who are struggling.

Finally, he discussed some idea for what Congress and/or the White House could do about impact of opioids in community. First, there should be funding provided for wraparound, supportive services. Second, there should be an effort to incentivize the creation of housing and

employment opportunities for those transitioning out of opioid. Councilman Lewis noted that the Summit provided a sample Tribal resolution declaring opioids a Tribal state of emergency, that could be used to press for funding from the White House.

There were a number of comments from those attending Councilman Lewis' presentation:

- Should urge federal government to move fentanyl to Schedule I drug (i.e., that it has no approved medical use)
- Need to address Tranq: "Xylazine is making the deadliest drug threat our country has ever faced, fentanyl, even deadlier," said Administrator Milgram. "DEA has seized xylazine and fentanyl mixtures in 48 of 50 States. The DEA Laboratory System is reporting that in 2022 approximately 23% of fentanyl powder and 7% of fentanyl pills seized by the DEA contained xylazine." Persons who overdose on a combo of fentanyl with Tranq cannot be revived with Naloxone, it does not work on this combination.
- We are working on networking with other programs, not just within the Tribe but with the state agencies. The summit was very helpful for networking, getting ideas, and seeing others working on these issues.
- Need to get rid of the "silos" among various tribal programs
- There is not one answer, it requires a number of solutions and strategies, going to require collaboration
- Many participants spoke of the impact of fentanyl in their communities and the difficulty in not just getting people into treatment and recovery, but also in keeping them away from getting dropped right back into the same community of triggers when they complete treatment. Housing (especially supportive housing) is critical in providing a means of transition from treatment into full recovery.
- Need to remove the barriers to treatment – it is easier to get fentanyl that to access housing and other services.
- Leaders of five tribes went to Iceland to see the Icelandic prevention model in operation. Highly recommended to look it up. Two articles linked here – one a general overview, one a more scholarly article.
  - https://planetyouth.org/the-icelandic-prevention-model/
  - https://www.frontiersin.org/articles/10.3389/fpubh.2023.1117857/full#:~:text=11%2C%2012).-,The%20Icelandic%20Prevention%20Model,pro%2Dsocial%20positive%20youth%20development.

g. Lewis v. Clarke: Individual Capacity Lawsuits and Sovereign Immunity

Ed Clay Goodman, Dave Heisterkamp, and Kelly Rudd made their annual presentation concerning the ongoing impacts of the Supreme Court's *Lewis v. Clarke* decision, which allowed a suit to proceed against a tribal employee sued in his individual capacity for actions undertaken during the course of his tribal employment. This year the cases involved instances where a court found that sovereign immunity was not a bar, but the suit was dismissed on other grounds. For example, in case that arose at the Tulalip Resort and Casino, the Tribal

security guards were sued for not intervening in a domestic violence incident in which a husband was choking his wife repeatedly. The wife died of her injuries, and the suit against the security guards was brought in their individual capacities. Because they were sued in an individual capacity for failing to intervene, the court found that the Tribe's sovereign immunity was not a bar. However, the court also found that in their individual capacities, the security guards did not have any special duty to intervene in this kind of situation, and that such duty would only have arisen in their official capacity. A similar case involving a sexual assault at a Tribal resort (resulting from the resort staff giving a room key to an unauthorized person) was dismissed not on sovereign immunity grounds (the resort staff were sued in their personal capacities) but because the Tribe was a "necessary and indispensable party" to the case. The power point for this entire presentation is also attached.

IV. Closing Plenary Session

The Legal Symposium concluded with a plenary session on October 6, 2023.

Samantha Jo Weis, attorney; Leon Leader Charge, Indigenous Research and Treatment Prevention Specialist; and Jody Perez, Executive Director of the Salish & Kootenai Housing Authority, conducted a roundtable discuss on tackling opioids through community efforts and policy. **Douglas Marconi Sr. of the Colville Indian Housing Authority** was the moderator. The panel discussed some of the projects they have developed in their communities, such as building recovery centers designed for men, women, and families. They also noted some of the funding sources available to help with tackling opioid issues, including funding through the Substance Abuse and Mental Health Services Administration (SAMHSA) and through state programs that can be accessed through grants or partnerships with state agencies. They further remarked on their efforts to use tribal cultures and partnerships with tribal police as ways to combat opioid additions and increase community safety.

Conclusion

If you have any questions about this memorandum or any of the topics discussed in this memorandum, please contact Ed Clay Goodman (egoodman@hobbsstraus.com) or Cari Baermann (cbaermann@hobbsstraus.com). Both may also be reached at 503-242-1745.

Lewis v. Clarke: The Seven Year Itch

Presented by
Dave Heisterkamp
Ed Goodman
and Kelly Rudd

October 6, 2023

Lewis v. Clarke

(2017) 581 U.S. 155, 137 S.Ct. 1285, 197 L.Ed.2d 631

- **HELD**: In a suit brought against a tribal employee in his individual capacity for a tort committed in the scope of employment, the employee, not the tribe, is the real party in interest and the tribe's sovereign immunity is not implicated.
- **HELD**: An indemnification provision codified under tribal law cannot, as a matter of law, extend the tribe's sovereign immunity to individual employees who would otherwise not fall under its protective cloak.

What the *L v. C* Majority Said

- Tribal employee was sued in his personal or individual capacity, as opposed to official, capacity.
- Suits against government officers for actions taken under the color of state law are not barred by the state's sovereign immunity. (*citing Hafer* and *Bivens)*
- "This is not a suit against [the]Tribal employee in his official capacity. It is simply a suit against employee to recover for his personal actions, which will not *require* action by the sovereign or disturb the sovereign's property."

What the *L v. C* Majority Said

- **"The critical inquiry is who may be legally bound by the court's adverse judgment, not who will ultimately pick up the tab."**
- The "tribal employee was operating the vehicle within the scope of his employment, but on state lands, and the judgment will not operate against the tribe" (because the State courts have no jurisdiction over the Tribe per *Kiowa* and *Bay Mills*).
- "[I]ndemnification is not a certainty here. The [Tribal employee] will not be indemnified by the [Tribe] should it determine that he engaged in 'wanton, reckless, or malicious' activity.'" Indemnification provisions are a voluntary choice on the part of the state.

Lewis v. Clarke: Impact on Sovereign Immunity

- In 2023, there were 5 state court cases 26 federal district court cases and 5 federal appellate court cases that discussed (not just cited) *Lewis v. Clarke*. About 6 of the total federal cases involved officers or employees of Indian tribes.
- Some of these cases are grappling with the scope and meaning of *Lewis v. Clarke*. We are beginning to see many jurisdictions cite their own *L v. C* caselaw.
- Other cases underscore our previous "use the force wisely" advice, particularly in payday lending and employment matters.

Lac Du Flambeau Band of Lake Superior Chippewa Indians, et al., Petitioners *v.* Brian W. Coughlin, 599 U. S. ____ (June 15, 2023)

- In June 2019, Brian Coughlin took out a $1,100 payday loan from Lendgreen, a wholly owned subsidiary of the Lac du Flambeau Band of Lake Superior Chippewa Indians. At the end of 2019, Coughlin filed for Chapter 13 bankruptcy in the U. S. Bankruptcy Court for the District of Massachusetts. In his filing, Coughlin claimed his debt to the Band, which at this point totaled $1,600 with interest, as a nonpriority unsecured claim.
- Coughlin then moved to enforce the automatic stay in bankruptcy against the Band to prevent them from pursuing further debt collection efforts. In response, the Band asserted tribal sovereign immunity and attempted to dismiss Coughlin's motion seeking enforcement of the automatic stay.

Lac Du Flambeau Band of Lake Superior Chippewa Indians, et al., Petitioners *v.* Brian W. Coughlin – Definition at Issue

Section 101(27) of the Bankruptcy Code: the term "governmental unit": means United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under this title), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; **or other foreign or domestic government.**

Lac Du Flambeau Band of Lake Superior Chippewa Indians, et al., Petitioners *v.* Brian W. Coughlin – Prior Circuit Court Rulings

Buchwald Capital Advisors, LLC v. Sault Ste. Marie Tribe of Chippewa Indians (In re Greektown Holdings, LLC), 917 F.3d 451 (6th Cir. 2019).

- "Yet even if Indian tribes are the only sovereigns not specifically mentioned in 11 U.S.C.§ 101(27), then "why not just mention them by their specific name, as Congress has always done in the past?" *[cite omitted].* Congress' failure to do so, after arguably mentioning every other sovereign by its specific name, likely constitutes "circumstances supporting [the] sensible inference" that Congress meant to exclude them, pursuant to the familiar *expressio unius* canon. *[cite omitted]"*

Krystal Energy Co. v. Navajo Nation, 357 F.3d 1055 (9th Cir. 2004).

- "…reading [the statute's] express abrogation as reaching tribes simply interprets the statute's reach in accord with both the common meaning of its language and the use of similar language by the Supreme Court. No implication beyond the words of the statute is necessary to conclude that Congress "unequivocally expressed" its intent to abrogate Indian tribes' immunity."

Lac Du Flambeau Band of Lake Superior Chippewa Indians, et al., Petitioners *v.* Brian W. Coughlin - continued

- Bankruptcy Court grants the Band's motion to dismiss finding that the automatic stay's abrogation of sovereign immunity did not apply to Indigenous tribes because the plain language of the statute leaves the Band out of the statute's enumerated list of governmental units to which the abrogation applies, even though other statutes have regularly included the term "Indian tribes" when intending to abrogate their sovereign immunity in other contexts.
- On appeal, the First Circuit Court of Appeals reversed reasoning that the plain meaning of the phrase "any governmental unit" in Section 106(a) includes Indigenous tribes because a tribe is a government. Therefore, Indigenous tribes qualify as domestic rather than foreign governments.

Lac Du Flambeau Band of Lake Superior Chippewa Indians, et al., Petitioners *v.* Brian W. Coughlin – SCOTUS Holdings, 8-1 (Gorsuch, dissent)

On Band's petition for cert. to SCOTUS

- HELD: Congress intended to abrogate the sovereign immunity of <u>all</u> "governmental units" and subject all governments to certain legal proceedings in Bankruptcy Court.
- HELD: Congress drafted a broad definition of the term "governmental unit" that includes "other foreign or domestic governments."
- HELD: Tribes are "indisputably" governments and therefore the Bankruptcy code abrogates (or waives) the sovereign immunity of tribes as well. Tribes are "governmental units" that may be brought into Bankruptcy proceedings.

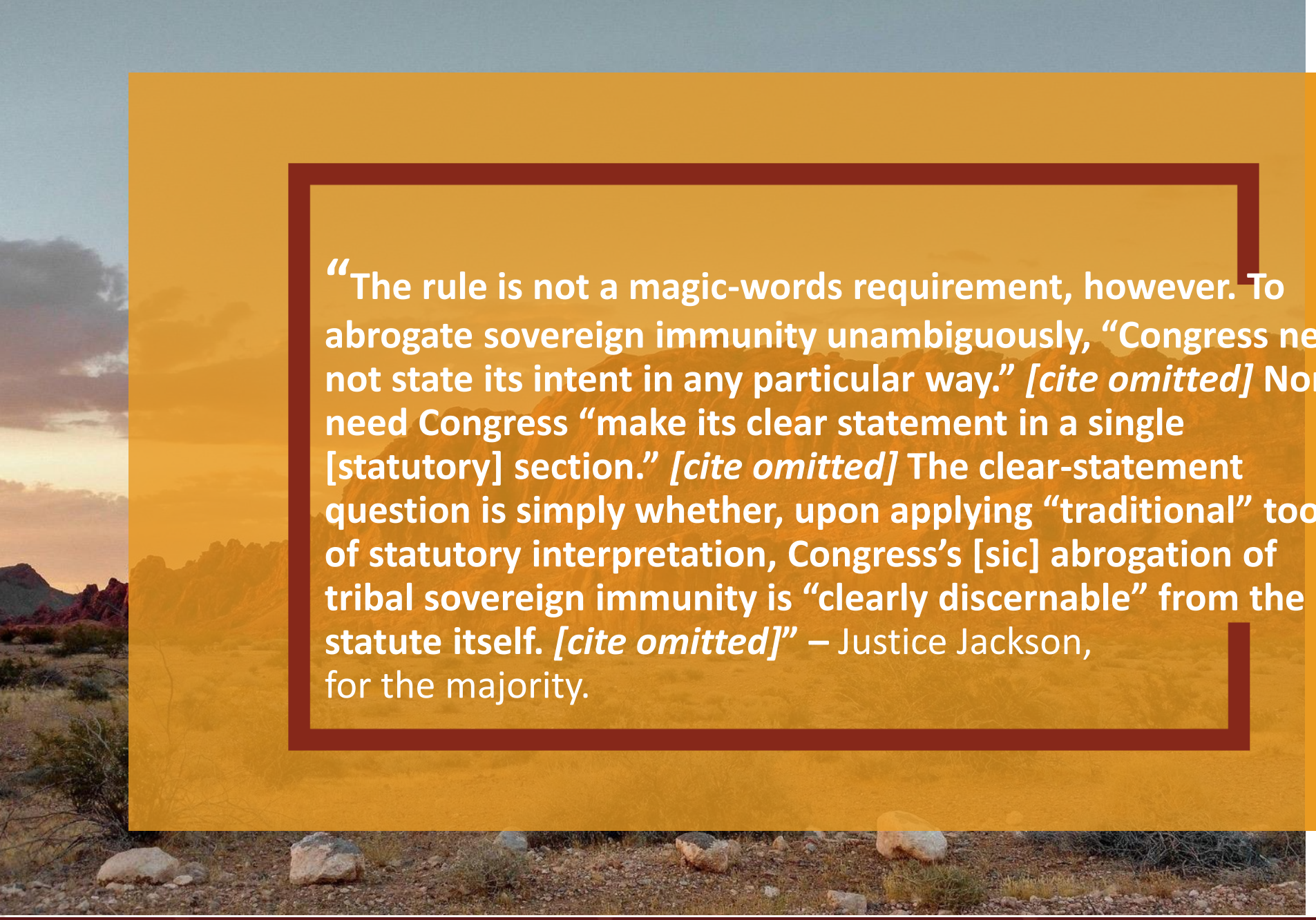
Lac Du Flambeau Band of Lake Superior Chippewa Indians, et al., Petitioners *v.* Brian W. Coughlin - Recent Housing Case

Numa Corp. & Cedarville Rancheria v. Diven, Case No. 22-15298, 2022 WL 17102361 (9th Cir. Nov. 22, 2022) (unpublished)

- In 2017, Tribal Sec. 17 Corp. hired contractor to build a single home on trust land using NAHASDA funds
- Contractor failed to perform after multiple extensions
- Tribe terminated contract, completed house at increased expense, and in September 2019 sued contractor in Tribal Court
- Contractor filed for bankruptcy in September 2020
- HELD: Request for status conference in tribal court triggered violation of automatic stay in bankruptcy
- Follows holding in **Krystal Energy**

Lac Du Flambeau Band of Lake Superior Chippewa Indians, et al., Petitioners *v.* Brian W. Coughlin - Consequences for Tribes/TDHEs

- Tribes can be brought into Bankruptcy proceedings (e.g. automatic stay, fraudulent transfers, preferential payments);
- Tribes can be bound by Bankruptcy court plans and decisions (e.g. lease transfers, cancellations, contract assumptions, discharges of debt);
- Costly litigation to participate in Bankruptcy proceedings;
- Treatment of per capita payments in individual debtor bankruptcies;
- Possibility of federal legislation relevant to tribal eligibility to file for bankruptcy;
- Erosion of required standard for waivers of sovereign immunity in other federal laws;
- Strong likelihood that Tribes cannot be debtors under Bankruptcy Code; SCOTUS did not expressly address whether Tribes or Tribal entities are eligible to file for bankruptcy as debtors. However, Section 109 of the Bankruptcy Code limits eligible debtors to a "person" (Chaps. 7, 11 or 13) or a "municipality" (Ch. 9).



"The rule is not a magic-words requirement, however. To abrogate sovereign immunity unambiguously, "Congress need not state its intent in any particular way." *[cite omitted]* Nor need Congress "make its clear statement in a single [statutory] section." *[cite omitted]* The clear-statement question is simply whether, upon applying "traditional" tools of statutory interpretation, Congress's [sic] abrogation of tribal sovereign immunity is "clearly discernable" from the statute itself. *[cite omitted]*" – Justice Jackson, for the majority.

Fitzgerald, et al. v. Wildcat, et al., 3:20-cv-00044 (W.D. Va. Aug. 18 2023)

- Five plaintiffs bring class action claims, including violations of RICO and state usury laws, against 12 Lac du Flambeau Band of Lake Superior Chippewa Indians Tribal Council members, 2 tribal employees, and 2 non-tribal payday lending partners, in their official and individual capacities.
- Payday loans made by 19 subcontracted lending entities (including Lendgreen) online in VA, MD, GA, and FL with interest rates ranging from 300% to 771%.
- All loan agreements had mandatory arbitration clauses limiting dispute resolution under "the laws of the Tribe and applicable federal laws."
- Defendants move to alternatively compel arbitration or dismiss on multiple grounds.

Fitzgerald, et al. v. Wildcat, et al., 3:20-cv-00044 (W.D. Va. Aug. 18 2023)

- HELD: While loan agreement arbitration clauses allow for federal claims, the clauses violate public policy for attempting to prospectively waive any state law substantive remedies and rights in arbitration.
- HELD: Plaintiffs have alleged enough to sustain RICO claims seeking actual damages, treble damages, and costs from Tribal Council and Tribal employee defendants in their individual capacities.
- HELD: Plaintiffs, as private parties, may seek prospective relief against Tribal Council Defendants in their official capacities, under *Ex Parte Young* for state licensing and usury violations.
- HELD: Tribe and 19 Tribal lending entities were not indispensable parties because Tribal Council can adequately represent the interests of the Tribe and lending entities. Although the lending entities would not be directly bound by prospective relief, they could not continue to collect on the outstanding loans without the aid of the Tribal Council who oversees them.

“Plaintiffs' allegations support a reasonable inference that the Tribal Council and Tribal Employee Defendants as well as non-tribal lenders . . .‘objectively manifested an agreement to participate directly or indirectly in the affairs of the enterprise' through the collection of unlawful debts and ‘had knowledge of the essential nature of the plan' of the conspiracy. [cite omitted]” – Judge Norman K. Moon

L.B. v. Moreno, A164026 (Cal. App. Sep 15, 2023)

- A New Hope: Tribe as a Necessary and Indispensable Party?
- A "necessary" party is someone who is directly affected by the outcome of a lawsuit. They must be included in the case unless there is a good reason not to.
- An "indispensable" party is a necessary party that cannot be joined, and in whose absence the case cannot proceed.
- If a Tribe is determined to be a necessary party, and cannot be joined because of the **Tribe's** sovereign immunity, the case must be dismissed.

L.B. v. Moreno, A164026 (Cal. App. Sep 15, 2023)

- A suit brought by a guest at a Tribe's hotel and casino, against two employees of the hotel in their individual capacities; the Tribe was not named as a party to the case.
- Plaintiff alleges that defendants acted negligently when defendant Moreno provided a room key to two individuals who were not guests of the hotel, and who then used that key to enter a hotel room where they harmed plaintiff.
- Defendants moved to dismiss and "argued the Tribe was a necessary and indispensable party…because it was an 'active participant' in the conduct underlying the complaint's allegations."
- The trial court agreed and dismissed, and plaintiff appealed.

L.B. v. Moreno, A164026 (Cal. App. Sep 15, 2023)

- A party is considered necessary "if in the party's absence complete relief cannot be accorded among those already parties." (Cal. Code Civ. Proc. § 389). In this case, the trial court "impliedly concluded the Tribe was a necessary party" to this suit.
- Plaintiff relied on *Lewis v. Clarke* to argue that complete relief could be accorded to the parties in the absence of the Tribe as a named defendant.
- On appeal, the court held that *Lewis* does not assist plaintiff because the argument at issue is whether the Tribe is necessary party, not whether the Tribe's sovereign immunity barred action against its employee(s).

L.B. v. Moreno, A164026 (Cal. App. Sep 15, 2023)

❖ The appellate court further stated that the legal arguments underlying the *Lewis* decision do not apply to this case because the trial court's "conclusion that complete relief cannot be accorded to the parties in the Tribe's absence is not based on whether defendants have a right to indemnification from the Tribe."

❖ The appellate court held that *Lewis* is factually distinguishable from this case because *Lewis* was "an action which plaintiffs still could have brought had the employee been driving a personal vehicle on personal time," whereas the defendants in this case "were involved only because they were employees of the Tribe, working at the hotel operated by the Tribe, on the Tribe's property."

❖ The appellate court thus concluded that the trial court acted "well within its discretion" in deeming the Tribe a necessary party to this case.

"In [*Lewis*] 'the accident occurred on state land, and the action was "simply a suit against [the employee] to recover for his personal actions' (*id*. at p. 163)-an action which plaintiffs still could have brought had the employee been driving a personal vehicle on personal time. Here, defendants were involved only because they were employees of the Tribe, working at the hotel operated by the Tribe, on the Tribe's property.
– California Court of Appeals

Pitoitua v. Gaube et al., Wash. App. Div. 1 (Sept. 5, 2023)

❖ Return of the Jedi: What duty does an individual capacity defendant owe the Plaintiff?

❖Sovereign immunity does not protect individuals sued in individual capacity – even if they were within scope of employment.

❖ **<u>But</u>**: if the individual capacity defendants don't owe any duty to the plaintiff when acting in their individual capacity, then the suit will be dismissed – just not on sovereign immunity grounds.

Pitoitua v. Gaube et al., Wash. App. Div. 1 (Sept. 5, 2023)

- In this case, an individual (Letoi) died as a result of an altercation with her partner in the parking lot of a tribally-owned and managed casino; administrator for Letoi's estate, Pitoitua, then sued multiple casino employees present that night, in their personal capacities, for their negligent failure to intervene and protect Letoi.

- The trial court "found that (1) Pitoitua's allegations against the employees in their personal capacities failed because they owed no personal duty to Letoi as casino employees…and (2) the state court lacked subject matter jurisdiction because sovereign immunity barred the claims as the Tulalip Tribes were the real parties in interest, not the individual defendants." Pitoitua appealed.

Pitoitua v. Gaube et al., Wash. App. Div. 1 (Sept. 5, 2023)

❖ The appellate court agreed with Pitoitua "that the trial court erred in dismissing the case based on tribal sovereign immunity," but held that "the trial court did not err in concluding that the employees did not owe a legal duty to Letoi." It therefore affirmed.

❖ The court stated: "We follow Lewis v. Clarke…to determine whether sovereign immunity bars a suit against tribal employees."

❖*Lewis* held that when "making this assessment, courts may not simply rely on the characterization of the parties in the complaint, but rather must determine in the first instance whether the remedy sought is truly against the sovereign."

❖ In applying *Lewis*, the appellate court "conclude[s] that tribal sovereign immunity did not extend to the casino employees" because "[a]ny remedy would expressly operate against them, not the Tribes."

Pitoitua v. Gaube et al., Wash. App. Div. 1 (Sept. 5, 2023)

❖ The employees argue that this case is distinguishable from *Lewis* because the alleged negligence occurred on tribal land, but the appellate court relied on *Acres Bonusing v. Marston* to establish that sovereign immunity cannot be granted to employees of a tribe or its businesses solely because the conduct in question took place on tribal land.

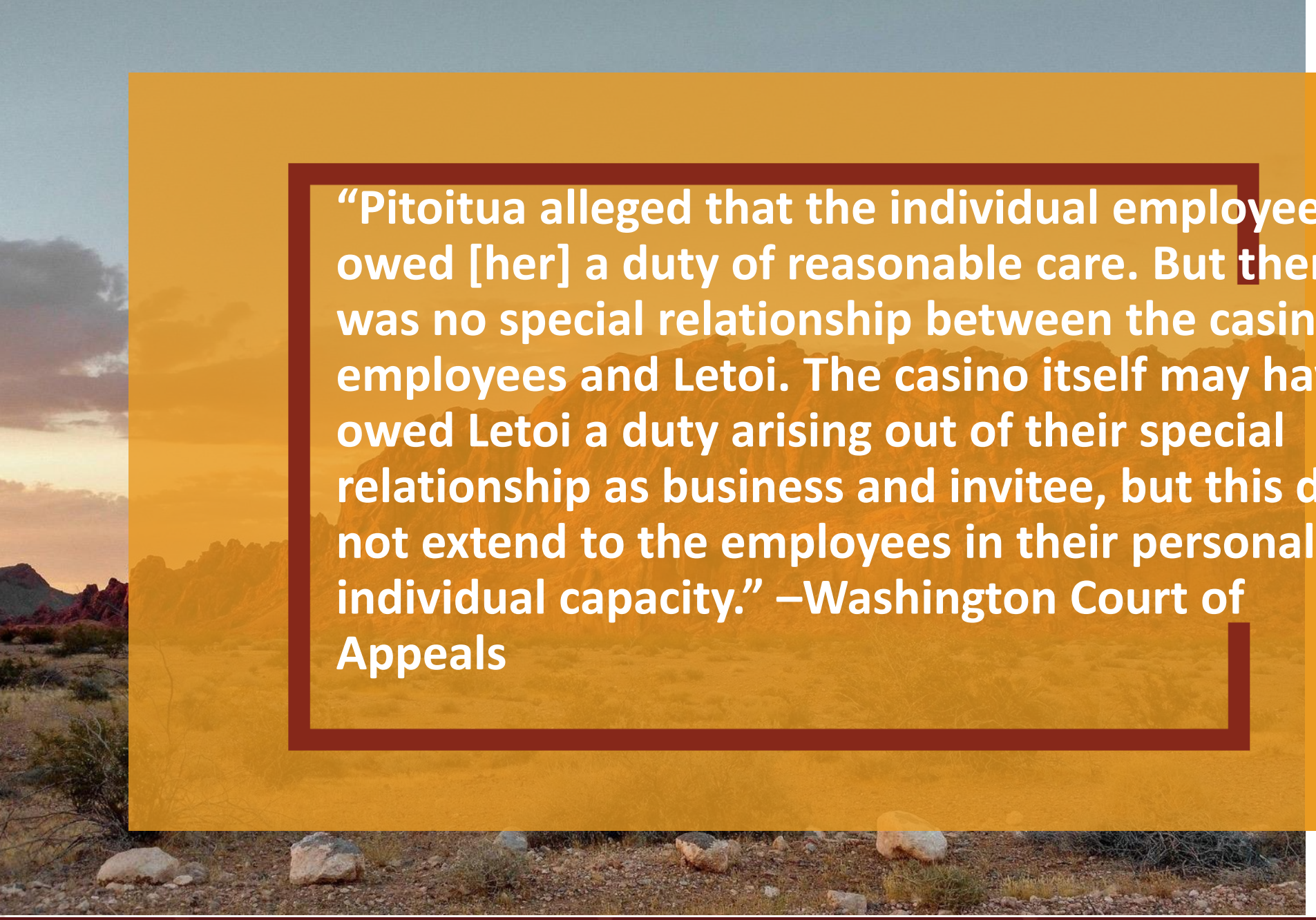
❖ The employees argue that this case is also distinguishable from *Lewis* because "the real case is against the tribal employees for their alleged negligence within the scope of their employment under the tribe on tribal land" and not against the employees in their personal capacities.

Pitoitua v. Gaube et al., Wash. App. Div. 1 (Sept. 5, 2023)

❖ The appellate court disagreed with the employees, arguing that "the employees were not engaging in tribal events and the alleged actions did not include the Tribes other than the Tribes' ownership of the establishment", so "[a]ny remedy would not operate against the Tribes, but the employees themselves."

❖ As such, the appellate court stated they will "follow Acres Bonusing, and conclude that the trial court erred in dismissing Pitoitua's claims based on a lack of subject matter jurisdiction based on sovereign immunity."

❖Ultimately though case was dismissed because Defendants in their individual capacities ***did not owe any duty to Plaintiff***.



"Pitoitua alleged that the individual employee owed [her] a duty of reasonable care. But there was no special relationship between the casino employees and Letoi. The casino itself may have owed Letoi a duty arising out of their special relationship as business and invitee, but this does not extend to the employees in their personal and individual capacity." –Washington Court of Appeals

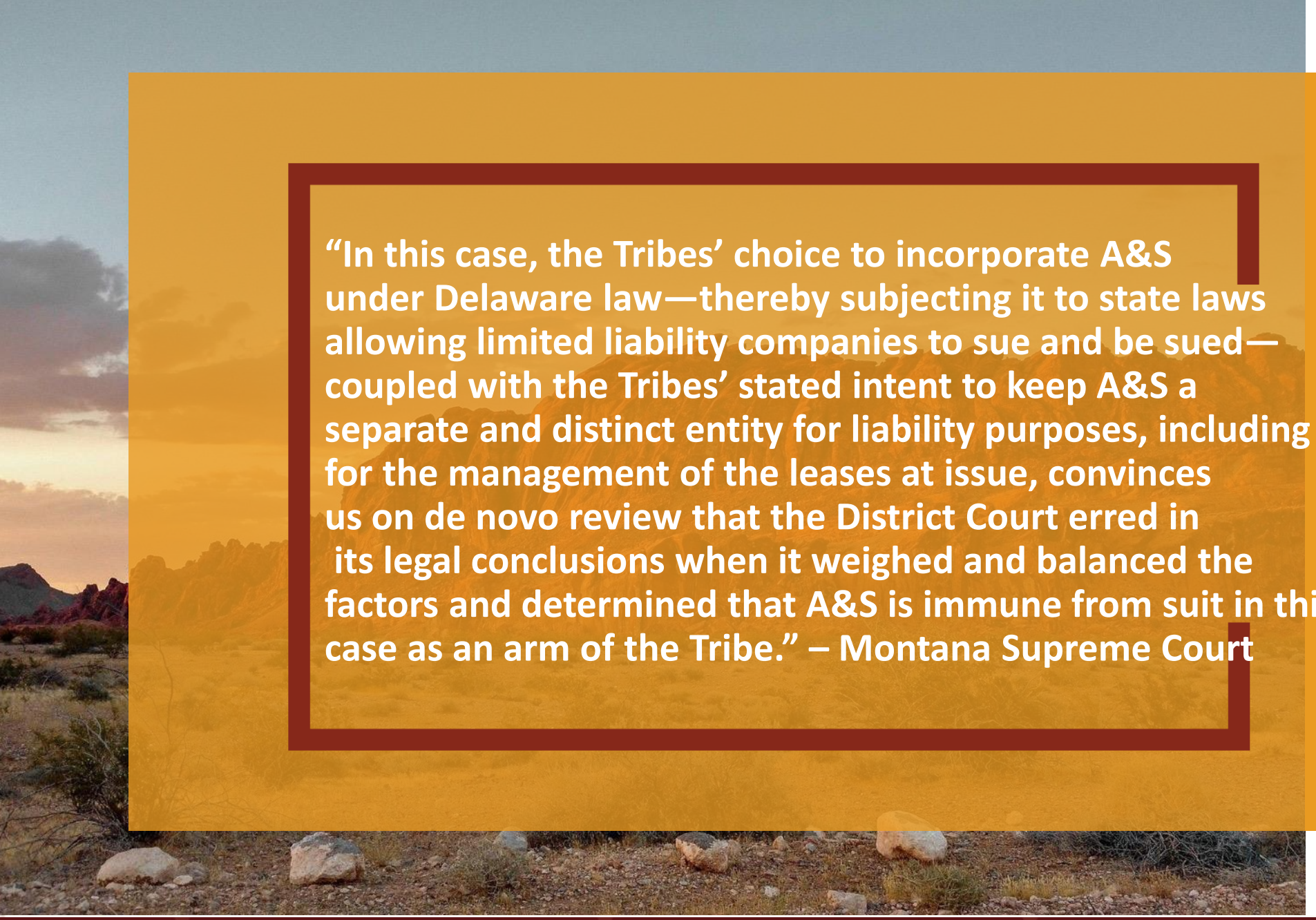
Lustre Oil v. Anadarko and A&S Minerals Company, 411 Mont. 349 (April 6, 2023)

- Tribal Corporation (Fort Peck, Assiniboine & Sioux Tribes) created to participate in minerals development joint ventures.
- Tribal Corp (A&S) incorporated under Delaware law.
- Lustre Oil sues to quiet title to on-reservation mineral leases.
- Montana trial court dismisses case – says A&S is arm of Tribe, has sovereign immunity, therefore cannot be joined.

HELD: incorporation under state law doesn't categorically waive sovereign immunity.

- "*Breakthrough*"629 F.3d 1173 (10th Cir. 2010) factors should be weighed, "all the circumstances." State incorporation "weighty."
- Tribe intended "clear separation" for A&S from tribal government = A&S has no sovereign immunity.

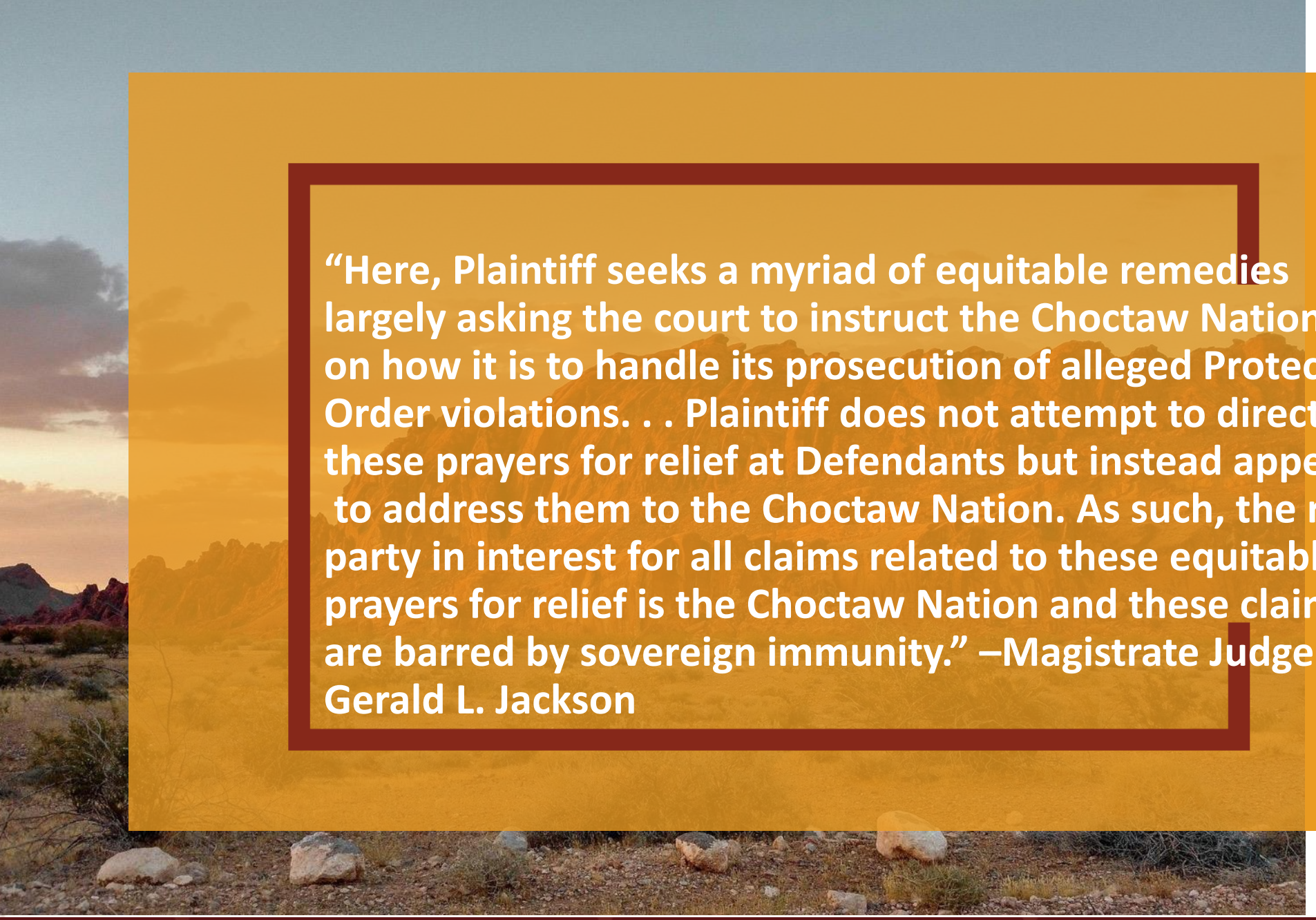
Concurrence— "multi-factor balancing test" = "courts left with a malleable muddle with little guidance."



"In this case, the Tribes' choice to incorporate A&S under Delaware law—thereby subjecting it to state laws allowing limited liability companies to sue and be sued—coupled with the Tribes' stated intent to keep A&S a separate and distinct entity for liability purposes, including for the management of the leases at issue, convinces us on de novo review that the District Court erred in its legal conclusions when it weighed and balanced the factors and determined that A&S is immune from suit in this case as an arm of the Tribe." – Montana Supreme Court

Phillips v. James, CIV-21-256-JFH-GLJ (E.D. Okla. Jan 18, 2023)

- Phillips (native) (pro se) sues Choctaw Nation Public Safety Employees in their individual capacity in federal court.
- "regarding alleged actions and inactions taken in relation to Protective Order" in place against neighbor (Choctaw).
- Seeks "myriad of equitable remedies." Wants police to be more active in enforcing the Protective Order. Amends to add money damages claims.
- Case dismissed on sovereign immunity grounds because it "asks court to instruct Choctaw Nation" on how to handle Protective Order violations. *See Lewis v. Clark* ("real party in interest").
- Money damages claims require tribal court exhaustion, because of "comity," and "reservation affair."
- Court raises exhaustion "*sua sponte*."



"Here, Plaintiff seeks a myriad of equitable remedies largely asking the court to instruct the Choctaw Nation on how it is to handle its prosecution of alleged Protective Order violations. . . Plaintiff does not attempt to direct these prayers for relief at Defendants but instead appears to address them to the Choctaw Nation. As such, the real party in interest for all claims related to these equitable prayers for relief is the Choctaw Nation and these claims are barred by sovereign immunity." –Magistrate Judge Gerald L. Jackson

Mestek v. Lac Courte Oreilles Comm. Health Ctr. (W. D. Wisconsin, May 17, 2022)

- Plaintiff brought an action under the federal False Claims Act (FCA), 31 U.S.C. §3730(h), and Wisconsin common law, claiming that defendants wrongfully retaliated against her by terminating her employment at the Lac Courte Oreilles Community Health Center("LCO-CHC") as a result of her efforts to prevent health care coding and billing fraud..
- Suit against named tribal officials "in both personal and official" capacities.
- Defendants moved to dismiss and District Court granted the motion.
- Plaintiff appealed to Seventh Circuit.

Mestek v. Lac Courte Oreilles Comm. Health Ctr. (7th Circuit, June 29, 2023)

- 7th Circuit AFFIRMED the District Court
- Stated that the Supreme Court has provided guidance on how to approach this personal- versus official capacity distinction. "[C]ourts may not simply rely on the characterization of the parties in the complaint, but rather must determine in the first instance whether the remedy sought is truly against the sovereign." *Lewis v. Clarke*, 581 U.S. 155, 162 (2017).
- That determination requires us to ask whether "the relief sought is only nominally against the official and in fact is against the official's office," in which case the claim is against the defendant in her official capacity.

Mestek v. Lac Courte Oreilles Comm. Health Ctr. (7th Circuit, June 29, 2023)

- These principles find straightforward application here and show why Mestek's claims are against the employee defendants only in their official capacities.

- In her complaint, Mestek requested front pay, back pay, damages, reinstatement, and injunctive relief prohibiting the defendants from blacklisting or retaliating against her. Critically, however, any monetary relief would come from the Health Center’s coffers.

- And reinstatement, as well, would likewise require action on the part of the Health Center, not the individual defendants.

"Put another way, a suit is against an individual in her personal capacity when the relief "will not require action by the sovereign or disturb the sovereign's property."

– 7th Circuit

Spivey v. Chitimacha Tribe of Louisiana, et. al. (5th Cir. Aug 16, 2023)

- Reported on this case last year (when it was at District Court).
- Plaintiff Spivey was CFO of Tribal Casino, and in that capacity authorized payment of a bonus to Tribal Chairman from his time working as an employee of the Casino.
- Tribal law, however, prohibited Tribal Councilmembers from being employed by the Casino or receiving any kind of payments from the Casino. The bonus, however, was for Chairman's employment at Casino ***prior to*** his election.
- Complaint was filed with the Tribal Gaming Commission, which referred it as a criminal matter to the Louisiana State Police, who investigated and charged Spivey (along with the casino CEO, who authorized payment of the bonus) with felony theft.
- Charges were referred to the U.S. Attorney, who declined to prosecute and referred the case back to the Tribal Council.

Spivey v. Chitimacha Tribe of Louisiana, et. al. (5th Cir. Aug 16, 2023) cont.

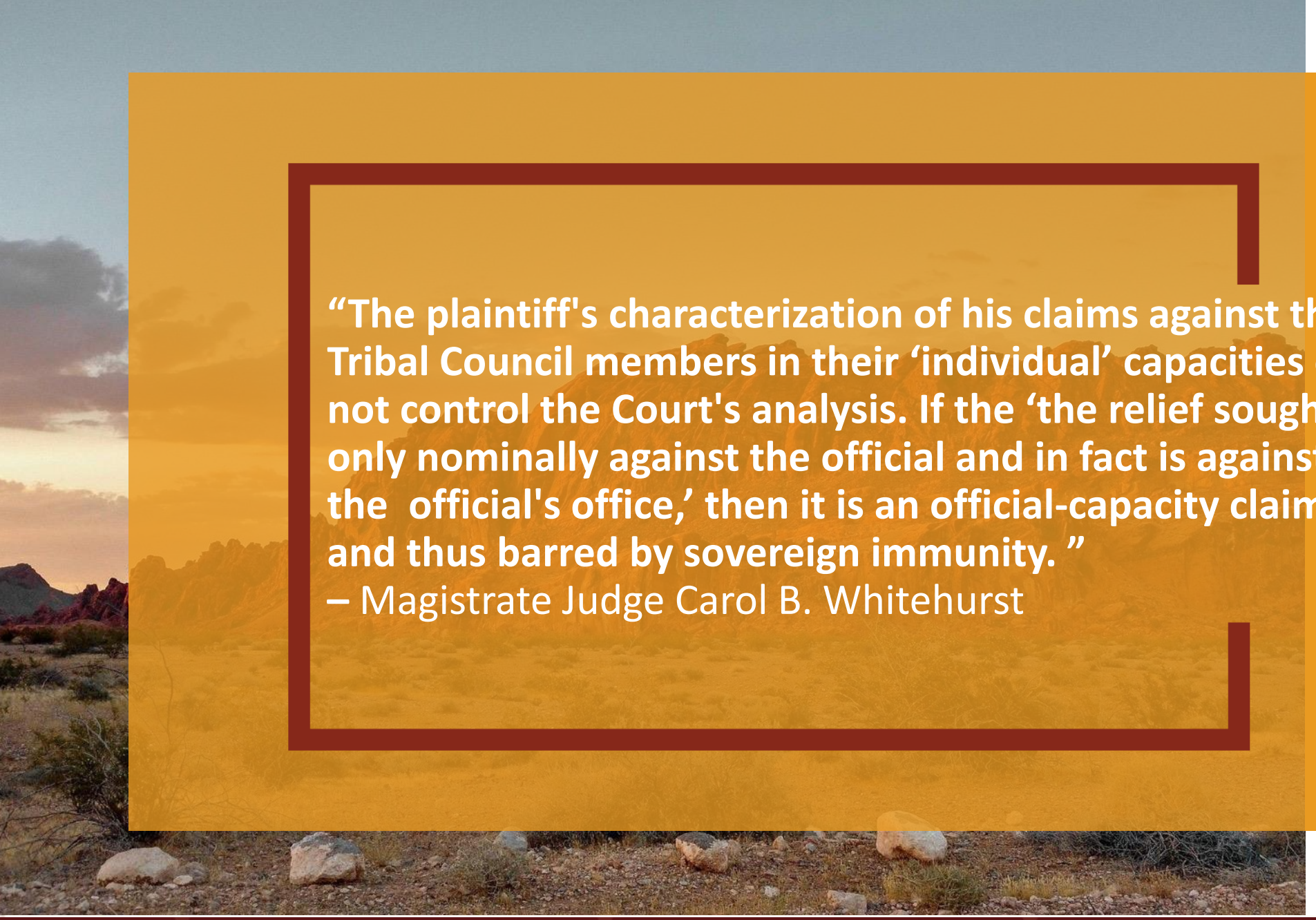
- Tribal Council was vested with the power to refer the matter to the local state district attorney or "do whatever is best in the interest of justice."
- Council referred the matter to local District Attorney and Spivey was terminated from his position as CFO. District Attorney also declined to indict and prosecute.
- Spivey sued Tribe, Casino, and Tribal Council members at the time of his termination (except the Chairman). Spivey's lawsuit sought damages against the individual Tribal Council members for violations of his civil rights and under state law claims of negligent and intentional tort in bringing a frivolous criminal complain.

Spivey v. Chitimacha Tribe of Louisiana, et. al. (5th Cir. Aug 16, 2023) cont.

- All Defendants were dismissed based on sovereign immunity.
- "It seems clear to the undersigned that these were official capacity actions. The Tribal Council members sued herein were vested with the investigatory power -- as a Tribe -- to refer the matter to the state district attorney for prosecution, and this power is set forth clearly in the Compact."
- Here, the Tribal Council members decided -- on behalf of the *Tribe* -- to refer the matter to the district attorney.
- Accordingly, the plaintiff's allegations relate solely to the actions and decisions that the Tribal Council defendants made as a Council on the Tribe's behalf. **SI still applies**

Spivey v. Chitimacha Tribe of Louisiana, et. al. (5th Cir. Aug 16, 2023) cont.

- **However,** Plaintiffs have subsequently filed an nearly identical action in State Court.
- Defendants sought to remove it to the federal court and have it dismissed. ·
- Plaintiffs sought to remand it.
- Plaintiffs succeeded, and case will now proceed in State court.



“The plaintiff's characterization of his claims against the Tribal Council members in their ‘individual’ capacities does not control the Court's analysis. If the ‘the relief sought is only nominally against the official and in fact is against the official's office,’ then it is an official-capacity claim, and thus barred by sovereign immunity. ”

– Magistrate Judge Carol B. Whitehurst

Hypothetical cases – New and Revisited

- Can housing officials be sued for actions taken to deny services?
- In carrying out evictions? For failing to carry out evictions?
- For conditions in housing?
- Do tribal officials face future legal claims for how they addressed the COVID-19 pandemic in their jurisdiction?
- Failure to spend federal funds or incorrect/ineffective/untimely expenditure of federal or tribal funds?
- Failure to institute minimum levels of protection/safest practices for citizens/members?
- Failure to close public spaces during the height of the infections? Or to properly execute other recommended protocols?
- Personal injury or wrongful death claims?

Lewis v. Clarke: the Seven Year Itch

Thank You!

Kelly Rudd
Baldwin, Crocker, & Rudd, PC
rudd@bcrattorneys.com

Ed Goodman
Hobbs, Straus, Dean & Walker, LLP
EGoodman@hobbsstraus.com

Dave Heisterkamp
Wagenlander & Heisterkamp, LLC
davidvh@wagenlander.com

HOBBS STRAUS DEAN & WALKER

Active Shooters: Developing an Effective Active Shooter Policy

Edmund Clay Goodman

Cari Baermann

Hobbs, Straus, Dean, & Walker, LLP

215 S.W. Washington Street, Ste. 200

Portland, OR 97204

egoodman@hobbsstraus.com

cbaermann@hobbsstraus.com

Active Shooter Facts and Statistics

Active Shooter: defined by the FBI as "an individual actively engaged in killing or attempting to kill people in a confined and populated area."

In 2022, 50 active shooter incidents occurred in 25 states

- Resulted in 313 casualties, excluding the shooters. (*This total does not include all gun-related incidents, such as self defense, gang violence, drug violence, etc.)*
- 213 harmed and/or wounded
- 100 deaths
- These numbers reflect an increasing average trend in active shooter casualties.

HOBBS STRAUS DEAN & WALKER

Active Shooter Statistics

In 2022:

- 16% of all active shooter incidents experienced citizen involvement.
- 94% of active shooters were male.
- 48% of incidents, the shooter had a known connection to either the location and/or victim(s).
- 58% of shooters were apprehended at the scene.
- 36% of shooters either died or committed suicide at the scene.
- 6% of shooters remain at large.

HOBBS STRAUS DEAN & WALKER

Why Implement an Active Shooter Policy?

- Implementing an Active Shooter Policy can help save lives, build confidence, and mitigate risk.
- Safety preparedness is a key element in an emergency plan.
- Regular training and practice responses are beneficial.

Core Components of an Active Shooter Policy

There are six core components found across Active Shooter Policies:

1. Organization
2. Delegation
3. Notification/Communication
4. Evacuation and Response
5. Recovery
6. Training

Organization Section

- Create a list of emergency contacts
- Have easily accessible reference guides, emergency safety plans, and/or active shooter policies.
  - Ensure these are updated by making revisions/additions in a timely manner.
  - Evacuation routes are clearly marked.
  - Management and resourceful phone numbers are included.
  - Emergency equipment easily accessible and noted (i.e. Fire Extinguisher, First Aid Kit)
  - Emergency contacts for employees, tenants, guests, etc.

Delegation Section

- Include a section outlining the assignment of responsibility
- Make it clear from the beginning who needs to be doing what and when.
- This helps produce quicker response times and calmer demeanors.

Notification and Communication Section

- Entities must consider what outside sources should be contacted and how to respond to outside sources contacting them regarding the incident.
  - E.g., a provision detailing how emergency response is contacted
  - Likewise, it is necessary to have a plan in place for how to contact employees and tenants/guests/customers
  - How will survivors, families, etc. be contacted?

Evacuation and Response Section

- Choose and describe the approach for handling active shooters:
  - **Run, Hide, Fight** = Run (evacuate), hide (hide out), fight (take action).
  - **ALICE** = Alert, lockdown, inform, counter, evacuate.
    - https://www.alicetraining.com

Run, Hide, Fight

- **Run**: If there is an accessible escape path, attempt to evacuate the premises.
- **Hide**: If evacuation is not possible, find a place to hide where the active shooter is less likely to find you.
- **Fight** is a last resort.
- **Run, Hide, Fight** appears to be the chosen approach by United States' agencies, e.g.:
  - Department of Homeland Security and the Cybersecurity and Infrastructure Security Agency

ALICE

- **Alert**: overcoming denial, recognizing the signs of danger and receiving notifications about the danger from others.
- **Lockdown:** encourages people to barricade the room if evacuation is not feasible.
- **Inform:** to continue to communicate information in as real time as possible, if it is safe to do so.
- **Counter:** focuses on actions that create noise, movement, distance and distraction with the intent of reducing the shooter's ability to shoot accurately
- **Evacuate:** when it is safe to do so

HOBBS STRAUS DEAN & WALKER

Evacuation and Response Section

Evacuation

- Have an evacuation plan in place detailing how people should escape the premises and where those impacted by the shooting should go if they manage to escape.
- Having a clear, safe route and emergency exit is critical.
- Create and distribute maps of emergency routes

Recovery Section

- Recovery plans are also typically found in active shooter policies.
- These plans detail how a business or entity will build back in the days, weeks, months, and even years after an active shooter incident.

Training Section

- Describes how the entity would like to pursue active shooter training.
  - **Training Methods**: watching videos, practicing active shooter drills, and reading the active shooter policy.
- **Training is crucial** to ensure the plan is implemented successfully and people know what to do and where to go
- Training can also include practicing safe evacuation routes and how notifications of such an event will be handled.
  - Who is calling first responders?
  - Is anyone reaching for the First Aid Kit?

Legal Implications of Implementing an Active Shooter Policy

- **Personnel issues** related to privacy, discrimination, workplace safety
- **Second Amendment** issues (ICRA equivalent)
- **VAWA issues** (should there be safety plans for DV victims; any kind of proactive communication)
- **Liability for harm** if active shooter happens and you have not taken steps, or if you have taken steps that were not sufficient (whether it is better not to do anything or to do something)

HOBBS STRAUS DEAN & WALKER

Liabilities of Implementing an Active Shooter Policy

- However, if you do not have an Active Shooter Policy:
  - Employees may not know how to respond, what the evacuation routes are, who should contact emergency services, etc.
  - It will be more difficult and take more time to coordinate a response to an active shooter situation

HOBBS STRAUS DEAN & WALKER

Questions?

Edmund Clay Goodman
Cari L. Baermann
Hobbs, Straus, Dean, & Walker, LLP
215 S.W. Washington Street, Ste. 200
Portland, OR 97204
egoodman@hobbsstraus.com
CBaermann@hobbsstraus.com

HOBBS STRAUS DEAN & WALKER

The HEARTH Act: Creating and Implementing a Tribal Lease Law

Edmund Clay Goodman
Cari Baermann
Hobbs, Straus, Dean, & Walker, LLP
215 S.W. Washington Street, Ste. 200
Portland, OR 97204
egoodman@hobbsstraus.com
cbaermann@hobbsstraus.com

HOBBS STRAUS DEAN & WALKER

The HEARTH Act: Creating and Implementing a Tribal Lease Law

- Topics covered:
  - The HEARTH Act;
  - The costs and benefits of tribes creating and implementing their own lease laws; and
  - The steps tribes can take to do so.

HEARTH Act

- **Prior to the HEARTH Act:** under federal law, leases of Tribal land required approval by the Secretary of the Interior.
- **HEARTH Act:**
  - Amends 25 U.S.C. §415, the primary authority for leasing Indian trust lands
  - Empowers federally recognized Tribes with a mechanism to opt out of the Secretarial approval requirements for Tribal leases.
  - Tribes can exercise their inherent sovereignty to develop and implement leasing regulations to specifically meet their own needs.

The HEARTH Act – Overview

- Helping Expedite and Advance Responsible Tribal Homeownership Act, Pub. L. No. 112-151 (2012).
- **HEARTH Act**: Authorizes any tribe, at its own option, to lease its tribal trust land without Secretary approval.
  - The Act only applies to Tribal land.
  - The Act does **not** apply to lands held in trust for individual Indian landowners.
- A tribe must first adopt regulations governing the leasing process, which are initially subject to approval by the Secretary.

Types of Leases

- **The HEARTH Act** authorizes tribes, under approved tribal leasing regulations, to grant surface leases for:
  - Agricultural
  - Business
  - Educational
  - Public
  - Recreational
  - Religious
  - Residential
  - Wind and Solar Resources
- **The HEARTH Act excludes**:
  - Leases for exploration/development/extraction of any mineral resources
  - Leases of individually owned allotted Indian lands

Lease Terms

- **Business and agricultural leases:**
  - 25 years, but may include an option to renew for up to 2 additional terms, at no more than 25 years each (a total maximum lease term of 75 years).
- **Residential, public, religious, educational, or recreational leases:**
  - A term of 75 years.

Potential Benefits

- **No BIA Approval**: Removing the requirement for BIA review/Secretarial approval of leases can significantly reduce the time to execute and approve leases.
- **Investment Incentive**: More efficient and timely execution of business, residential, and other leases can encourage investment and economic development in Tribal communities.
- **Selective Leasing:** Tribes can enact leasing regulations for specific areas (e.g. business leasing) and leave remaining areas (e.g. residential, agricultural) subject to BIA review and Secretarial approval.

HOBBS STRAUS DEAN & WALKER

More Potential Benefits

- **Tax Benefits:** Takes advantage of the tax prohibitions governed by BIA's leasing regulations (25 C.F.R. Part 162) which prohibit state and local taxation on permanent improvements, activities, and leasehold and possessory interests on leased tribal lands.
- **Examples of prohibited taxation**: severance, business use, privilege, public utility, excise, and gross revenue taxes.

Preparing for BIA Review

Recommended steps before submitting leasing regulations to the BIA for approval:

- **Assess** Tribal government's needs related to leasing and whether self-regulation is beneficial
- **Review** the HEARTH Act, 25 U.S.C. § 415(h) and 25 CFR Part 162
- **Refer** to Central Office's National Policy Memorandum (NPM-TRUS-29): it is valuable guidance to determine whether completed Tribal regulations are "consistent with" 25 CFR 162.
- **Review** HEARTH training materials on the BIA's website. https://www.bia.gov/service/hearth-leasing.

Requirements for approval of Tribal leasing regulations:

- Must be consistent with 25 CFR Part 162.
  - The term “consistent” is interpreted in a manner that maximizes the deference given to the Tribe.
  - The Act does not define or explain what it means for tribal leasing regulations to be "consistent with" BIA leasing regulations.
  - Congress expressly rejected a “meets and exceeds” standard during its final deliberations.
  - Tribes may follow Part 162 as a template, but should customize the lease regulations to fit the specific needs of their tribe.

Requirements for approval of Tribal leasing regulations:

- Must provide for an **environmental review process** that includes:
  - Identification and evaluation of significant effects of the proposed lease on the environment
  - A period for public notice and comment related to any significant impacts of the proposed lease on the environment
  - The Tribe's response to relevant and substantive public comments on environmental impacts prior to Tribal approval of the lease

HOBBS STRAUS DEAN & WALKER

What Must Tribal Leasing Regulations Contain?

General Provisions

- Authority, Purpose, and Policy
- Effective date
- Amendments and Changes
- Severability
- Conflicts of Law
- Applicable Laws
- Sovereign Immunity
- Definitions

What Must Tribal Leasing Regulations Contain?

Provisions governing lease requirements, e.g.:

- Types of leases
- Duration of leases and renewals
- Types of land covered (e.g. agriculture vs residential)
- Due Diligence and Appraisals
- Insurance and bonds
- Improvements to land
- Rentals, Subleases, and Assignments
- Recording Requirements, and
- Enforcement process.

What Must Tribal Leasing Regulations Contain?

Leasing Process and Documentation

- Provisions describing the documentation required to obtain a lease.
- Provisions describing the lease process, approval, management, and enforcement (i.e., the appropriate tribal entity overseeing these processes).
- Specify lease requirements

What Must Tribal Leasing Regulations Contain?

Environmental and Cultural Reviews

- A description of the required environmental and cultural review process (the National Environmental Policy Act (NEPA) is applicable)
  - Requires an environmental impact statement (EIS) to be prepared if a proposed federal action would significantly affect the quality of the human environment.

Appeals

- Provisions that govern an appeals process whereby the denial or approval of a lease is contested by the lessee or an interested party

HOBBS STRAUS DEAN & WALKER

Approval Process–Submission

1. **Submit complete package** to BIA Central Office, Office of Trust Services, DBD-TS:
   a) **A cover letter**, including: (1) A request for review and approval of the regulations under the HEARTH Act; (2) Contact information for parties with decision-making authority regarding the regulations, i.e., Tribal officers, legal counsel; and (3) Any special circumstances regarding submission of the regulations (an urgent need for approval; a unique provision included in the regulations, etc.)
   b) **Two originals of the Tribal leasing regulations**, with required tribal signatures, and
   c) **An applicable authorizing resolution(s)** (must be an original and not a copy)

HOBBS STRAUS DEAN & WALKER

Approval Process–Submission

1. **Submission – Mail the complete package to:**

   Department of the Interior, Bureau of Indian Affairs,
   Office of Trust Services,
   Deputy Bureau Director–Trust Services,
   Attention: Division of Real Estate Services,
   1849 C Street, NW, MS 4620-MIB,
   Washington, D.C. 20240.

2. Concurrently, the BIA will request that the Tribe email a PDF and Word version of the submission to the HAC.

Approval Process–BIA Review

- **Initial Review:** BIA Central Office will review and provide its changes to the leasing regulations.
  - The Secretary has 120 days from the date of initial submission to approve a tribe's leasing regulations.
  - Depending on the number of leasing regulations under review, this process should only take a couple of weeks
- **Modifications:** If the BIA determines the leasing regulations require modifications, the Tribe will be advised to address the required changes and consider the recommended changes.
  - Tribe will have 30 days to modify and resubmit the regulations to the BIA or to withdraw their submission
- **Review of Modifications**: BIA will then review the Tribe's modified regulations

Approval Process–Final Review

- **Final Submission**: Once the tribe, or its legal counsel, have reviewed BIA's changes and revised accordingly, the tribe resubmits two originals of the leasing regulations for final approval.
- **Final Review and Approval**: BIA will conduct a final review and submit the leasing regulations to the Secretary's Office for his signature and approval

- **Approval Flow Chart:** https://www.bia.gov/sites/default/files/dup/inline-files/2020.01.22_hearth_administrative_process_flow_chart.pdf

Resources

- BIA Sample Tribal Checklist for Leasing Regulations: https://www.bia.gov/sites/default/files/dup/assets/bia/ots/dres/BIA-Sample-Tribal-Checklist-for-HA-Regulations.pdf

- Details on submission and approval process: https://www.bia.gov/sites/default/files/dup/assets/bia/ots/dres/52-IAM-13_HEARTH-Act_Final_Signed_Issue_Date_July_8_2020.pdf

BIA Contacts

– The review of tribal leasing regulations is coordinated by the BIA Central Office, Division of Real Estate Services.

Division of Real Estate Services

Sharlene M. Round Face, Division Chief,

1001 Indian School Road, NW, Box #44
Albuquerque, NM 87104

E-mail: sharlene.roundface@bia.gov

HOBBS STRAUS DEAN & WALKER

Questions?

Edmund Clay Goodman
Cari L. Baermann
Hobbs, Straus, Dean, & Walker, LLP
215 S.W. Washington Street, Ste. 200
Portland, OR 97204
EGoodman@hobbsstraus.com
CBaermann@hobbsstraus.com