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In *Cayuga Indian Nation of New York v. Seneca County, N.Y.*, 2014 WL 3746795 (2d. Cir. 2014), the Cayuga Indian Nation had refused to pay taxes on land that had been alienated in the early 19th century in violation of the Indian Non-Intercourse Act but reacquired by the nation in the modern era and held in fee simple title. The district court held that, even though the county had the right to impose a property tax on the property, it could not foreclose for non-payment because of the Nation's **sovereign immunity**. The Second Circuit affirmed, rejecting the county's argument that a foreclosure action was in rem (against the property) rather than against the nation: "In *Michigan v. Bay Mills Indian Community*, [cite omitted], the Supreme Court once again held that tribes retain, as a necessary corollary to Indian sovereignty and self-governance, a common-law immunity from suit. This treatment of tribal sovereign immunity from suit is an avowedly broad principle, and the Supreme Court (like this Court) has thought it improper suddenly to start carving out exceptions to that immunity, opting instead to defer to the plenary power of Congress to define and otherwise abrogate tribal sovereign immunity from suit." (Internal cites and quotes omitted.)

In *Alabama-Coushatta Tribe of Texas v. United States*, 2014 WL 3360472 (5th Cir. 2014), the Tribe sued various Department of Agriculture agencies, challenging the National Park Service's issuance of permits to drill for oil or gas in the Big Thicket National Preserve; (2) the Forest Service's issuance of drilling permits for privately owned mineral estates located under the Sam Houston and Davy Crockett National Forests; (3) the Bureau of Land Management's issuance of oil and gas leases for land in the Sam Houston and Davy Crockett National Forests, and the collection of royalties and rent payments from these leases; and (4) the National Forest Service's exploitation and sale of timber resources from the Davy Crockett and Sam Houston National Forests. The Tribe contended that it held **aboriginal title** to the subject lands and that the federal permits violated the federal government's obligations under the common law trust doctrine and the Non-Intercourse Act. The district dismissed for lack of subject matter jurisdiction and the Fifth Circuit affirmed, holding that the tribe had failed to allege "agency action" sufficient to meet the standards required for waiver of the Government's sovereign immunity under the Administrative Procedure Act: "[T]he tribe's lawsuit is an impermissible programmatic challenge, and therefore, we lack jurisdiction over these claims. The Tribe's complaint fails to point to any identifiable action or event. Instead, the complaint brings a challenge to the federal management of the natural resources on the land in question. The complaint contends only that all of the leases, permits, and sales administered by multiple federal agencies, including any ongoing action by these agencies that encroach on the Tribe's aboriginal title, are unlawful. These are allegations of past, ongoing, and future harms, seeking 'wholesale improvement' and cover actions that have yet to occur. Such allegations do not challenge specific 'agency action.'"

In *U.S. v. Whiteagle*, 2014 WL 3562716 (7th Cir. 2014), Timothy Whiteagle was convicted of 12 federal offenses under 18 U.S.C.A. §§ 371 and 666, including conspiracy, corruption, **bribery**, tax evasion and perjury, arising out of his scheme to bribe Pettibone, a Ho-Chunk nation legislator, into using his influence to cause the nation to award tribal business to three different vendors that had hired Whiteagle. After the court sentenced Whiteagle to 10 year's imprisonment, he appealed, arguing that there was insufficient evidence of Pettibone's knowing participation in the charged conspiracy and acts of bribery, that the district court erred in permitting the

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introduction of certain evidence, that the court erred in estimating amounts lost to the nation and that the moneys conveyed to Pettibone were incorrectly characterized as bribes rather than gratuities. The Seventh Circuit rejected all of Whiteagle's arguments and affirmed: "It was reasonable to infer, as the district court did, that the three companies were willing to pay Whiteagle such large sums of money specifically because of his relationship with Pettibone and his professed ability to deliver Pettibone's vote and influence within the Ho-Chunk legislature. Moreover, Whiteagle's insistence that his role be kept quiet (recall MCA's laundering of his compensation through Support Consultants, and Whiteagle's suggestions that Trinity hide the proposed consulting fees meant for Atherton and himself in other expenses) supported an inference that his compensation was not legitimately earned. It is also a fair inference, given the evidence presented at trial, that it was the bribes Whiteagle transmitted to Pettibone, rather than Whiteagle's persuasiveness as a lobbyist, that secured Pettibone's favorable action as a legislator:"

In *Narula v. Delbert Services Corporation*, ___ F.Supp.2d ___, (E.D. Mich. 2014), Narula had borrowed \$5,000 from Western Sky Financial, LLC (Western Sky), a reservation-based **payday lender**. Western Sky transferred the loan to Delbert Services Corporation. After defaulting, Narula sued in federal court, alleging that the loan violated the Fair Debt Collection Practices Act and the Telephone Consumer Protection Act. Delbert contended that the plaintiff was required by the loan agreement to arbitrate her claims and, further, that the loan agreement provided for exclusive jurisdiction in the Cheyenne River Sioux Tribe Court. The district court dismissed, holding that the tribal court had no jurisdiction over the parties "because neither party has any ties whatsoever to the tribal nation," but that the arbitration clause was enforceable: "Allegations of fraudulent schemes are not sufficient to overcome the strong federal policy in favor of arbitration. The central question is whether the plaintiff's claim of fraud, as stated in the complaint, relates to the making of the Arbitration Agreement itself. Here, there are no allegations in the complaint that Defendant fraudulently induced Plaintiff to agree to an arbitration clause."

In *Blue Lake Rancheria v. Morgenstern*, 2014 WL 3695734 (E.D. Cal. 2014), a federally recognized tribe, Blue Lake Rancheria Economic Development Corporation (EDC), a corporation owned by the tribe and chartered under Section 17 of the Indian Reorganization Act, and Mainstay Business Solutions, a subsidiary of the EDC (collectively, "Plaintiffs") provided employee staffing services to businesses. Plaintiffs sued California officials seeking declaratory and injunctive relief related to the defendants' enforcement of state **unemployment taxes** mandated by the Federal Unemployment Tax Act, 26 U.S.C. § 3301 et seq. (FUTA), including encumbering tribal lands and assets, in violation of Plaintiffs' alleged tribal sovereignty. Plaintiffs sought to amend their complaint to add a claim under the Civil Rights Act of 1871, 42 U.S.C. § 1983, for injunctive relief. Citing the Supreme Court's 2003 decision in *Inyo County, California v. Paiute-Shoshone Indians*, the Court denied the motion, holding that the Plaintiffs were seeking to vindicate sovereign rights and, therefore, were not "persons" with standing to sue under Section 1983: "Plaintiffs are not seeking to protect individual rights from government encroachment, but to protect the communal interests of the tribe in a financial relationship with the State of California. This special relationship is the direct result of Plaintiffs exercising their 'prerogative' to become a reimbursable employer, a choice afforded to them as a federally recognized Indian tribe."

In *Navajo Nation v. U.S. Dept. of the Interior*, 2014 WL 3610948, not reported in F.Supp.2d (D. Ariz. 2014), the United States had, in 1954, intervened in a water rights suit in its role as trustee in order to assert federally reserved Winters water rights in the Lower Colorado River on behalf of a number of entities. On behalf of the Navajo Nation, the government asserted a claim only with respect to water from the Little Colorado River, a tributary of the Colorado. The litigation ultimately resulted in no allocation of water rights for the nation but allocations did occur in a number of subsequent federal actions. In the instant case, the Navajo Nation sought to establish rights to Colorado River Lower Basin water, arguing that, under the **Winters doctrine**, the United States "impliedly reserved for the benefit of the Navajo Nation a sufficient amount of water to carry out the purposes for which the Reservation was created, specifically to make the Reservation a livable homeland for the nation's present and future generations." The nation further asserted that the government was required by its trust obligation to assure sufficient water for the nation. Specifically, the nation contended that various interim rules administered by the federal government were adopted in violation of the National Environmental Protection Act (NEPA). The United States conceded that the nation has reserved water rights under the Winters doctrine but contended that it had assisted the nation with acquisition of water supply in the San Juan Settlement and that it was pursuing the nation's Winters rights in the ongoing general adjudication of the Little Colorado River System. The district court dismissed the nation's claims, holding that the nation had no standing to bring the NEPA-based claims because it could not demonstrate that the federal regulations prejudiced its Winters rights. The court acknowledged that "the United States owes a general **trust responsibility** to Indian tribes," but held that "unless there is a specific duty that has been placed on the government with respect to Indians, the government's general trust obligation is discharged by the government's compliance with general regulations and statutes not specifically aimed at protecting Indian tribes."

In *Black v. U.S.*, 2014 WL 3337466 (W.D. Wash. 2014), police officers of the Suquamish and Port Gamble S'Klallam Indian Tribes (PGST), with the assistance of county sheriff's deputies, sought to arrest PGST member Callihoo at a

home owned by Anthony Black, a non-Indian, on fee land within the boundaries of the Suquamish reservation. In the ensuing confrontation, officers shot and killed Black. Black's sister, who also resided at the home, brought a civil rights action pursuant to 42 U.S.C. § 1983 against the tribes and the tribal police officers. The court dismissed the claims against the tribes, but not the officers, on sovereign immunity grounds, holding that the officers acted in concert with sheriff's deputies and, therefore, arguably under "color of state law" for Section 1983 purposes: "Tribal sovereign immunity, like other types of **sovereign immunity**, extends to officers acting in their official capacity and within the scope of their authority. However, this does not alter 'the rule that individual capacity suits related to an officer's official duties are generally permissible.' Since Black is suing the officers in their individual capacities for actions taken within the scope of their employment under the color of state law, she has established a cognizable claim under § 1983 that may proceed under the jurisdiction of this Court."

In *Harvey v. Ute Indian Tribe of Uintah and Ouray Reservation*, 2014 WL 2967468, not reported in F.Supp.2d. (D. Utah 2014), plaintiffs initially sued four defendants in state court, including the Ute Indian Tribe of the Uintah and Ouray Reservation and officials of the Ute Tribal Employment Rights Office (UTERO), seeking a declaration with respect to the tribe's and UTERO's exercise of authority over non-Indians in certain categories of land based on principles of federal Indian law and also alleging two state-law causes of action, tortious interference with economic relations and extortion, against the UTERO defendants. Two of the defendants consented to state court jurisdiction. Later, the tribe removed the case to federal court, but that court remanded for lack of **federal jurisdiction**, holding that the removal required unanimity among the defendants, which could not be obtained: "Because the Initial Defendants manifested an intent to litigate in state court, and because they failed to remove soon after they became aware of possible federal-question issues, they waived their right to removal and their right to consent to removal. Removal to this court was therefore improper."

In *Wells Fargo Bank, N.A. v. Chukchansi Economic*, 118 A.D.3d 550 2014 WL 2721993, --- N.Y.S.2d ---- (N.Y. App. 2014), Chukchansi Economic Development Authority (CEDA), an agency of the Picayune Rancheria of Chukchansi (tribe), had issued \$310 million in bonds to finance construction of a casino resort. The bond indenture Agreement required that CEDA deposit all revenues from the Casino's operation into deposit accounts at Rabobank, and also required that CEDA, Wells Fargo, and Rabobank execute a Deposit Account Control Agreement (DACA). Competition between two factions, each purporting to be the tribe's official government, triggered litigation over control of casino revenues in multiple jurisdictions, including New York. The trial court had granted a preliminary injunction ordering the CEDA to maintain deposits at Rabobank and, later, had granted plaintiff's motion to dismiss appellants' counterclaim, granted defendants-respondents' motion to dismiss appellants' cross claims, and denied appellants' motions to modify the court's July 2, 2013 preliminary injunction. Appellants subsequently appealed from the court's refusal to modify the preliminary injunction. The appellate court held that the **state court lacked jurisdiction** over an intra-tribal dispute: "Appellants seek a declaration that defendant Chukchansi Economic Development Authority (CEDA) is lawfully governed by a board composed of seven named individuals; however, appellants themselves allege in their counterclaim and cross claims that the members of the CEDA Board are the same as the members of defendant Tribal Council of the Tribe of Picayune Rancheria of the Chukchansi Indians. The jurisdiction conferred on the New York courts by 25 USC § 233 "does not extend beyond the borders of this State" The tribe in the instant action is located in California, not New York. Furthermore, 25 USC § 233 "does not authorize courts of the State of New York to become embroiled in internal political disputes amongst officials of [an Indian tribe]'s government" (Bowen, 880 F Supp at 118; see also id. at 116, 120, 122-123). However, to decide whether the Ayala faction's actions were illegal, a court would have to determine whether the Ayala faction was the legitimate Tribal Council; this it may not do."

In *Simmonds v. Parks*, (Alaska 2014), the Minto Tribal Court had terminated the parental rights of Edward Parks, a member of the Native Village of Stevens, and Bessie Stearman, a member of the Native Village of Minto, to their daughter S.P. The tribal court did not permit the attorney for Parks and Stearman to argue orally at the hearing that the court lacked jurisdiction due to Parks' non-membership in the Minto Native Village. Parks did not file an appeal with the Minto Court of Appeals but instead sued S.P.'s foster parents, the Simmondses, in state court to regain custody of S.P. The Simmondses moved to dismiss Parks's state lawsuit on the basis that the tribal court judgment terminating parental rights was entitled to full faith and credit under the **Indian Child Welfare Act** (ICWA). The superior court denied the motion to dismiss, concluding that full faith and credit was not warranted because the tribal court had denied Parks minimum due process by prohibiting his attorney from presenting oral argument. The Alaska Supreme Court reversed, holding that Parks was required to exhaust his tribal court remedies and that the state court lacked jurisdiction: "Through ICWA's full faith and credit clause, Congress mandates that states respect a tribe's vital and sovereign interests in its children. This requires that we give the same respect to tribal court judgments that we give to judgments from a sister state. As a measure of that respect, we have refused to allow a party to collaterally attack a sister state's judgment when the party failed to appeal in that state's courts. Looking to federal law to interpret ICWA's full faith and credit mandate, we find persuasive the policies underlying the federal doctrine of exhaustion of tribal remedies, and we adopt that doctrine in this context. Unless one of the exceptions to the exhaustion doctrine discussed below applies, we will not allow a party to challenge a tribal court's judgment in an ICWA-defined child custody proceeding in Alaska state court without first exhausting available tribal court appellate remedies."

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