CROWELL LAW OFFICES

Tribal Advocacy Group

Scott Crowell*
*Licensed in Washington State and Arizona

Scott Wheat**
**Licensed in Washington State

Bruce Didesch***
*** Of Counsel Licensed in Washington State

Gyasi Ross**
**Licensed in Washington State

Lael Echo-Hawk**
Licensed in Washington State

9TH ANNUAL NORTHWEST GAMING LAW SUMMIT
December 1st AND 2nd , 2011
SEATTLE, WASHINGTON

LITIGATION UPDATE

LIST AND BRIEF SUMMARY OF NOTABLE COURT DECISIONS AND OTHER LEGAL DEVELOPMENTS REGARDING INDIAN GAMING ISSUED IN THE PAST YEAR

[Please note that this list identifies key cases as of November 18, 2012. If there are significant developments between November 18 and the December 1 date of the conference, a short supplement will be provided. Although the intent is to provide an exhaustive list of reported cases, we are certain the enclosed list is not complete. You may also retrieve copies of this update and any supplement at the firm's web page: crowelllawoffice.com. Additionally, although a crude attempt is made to divide the decisions by topic, any one decision may weigh in on additional topics. I also apologize in advance for attempts to simplify in a few sentences what are typically complex matters.]

Organized by topic:

I. GOOD FAITH NEGOTIATION LAWSUITS

Rincon Band of Luiseno Mission Indians of Rincon Reservation v. Schwarzenegger,

602 F.3d 1019 (9th Cir. April 20, 2010)

Court seeks views of the United States, 131 S.Ct. 847 (Mem), 178 L.Ed.2d 553, 79 USLW 3359, U.S., December 13, 2010 (NO. 10-330)

Cert. denied --- S.Ct. ----, 2011 WL 2518836 (Mem), 79 USLW 3722, 79 USLW 3727, (U.S.June 27, 2011)

This leaves intact, the Ninth Circuit decision that California's demand for 15% of gross gaming revenue to be paid into the General Fund is a demand for an illegal tax on tribal gaming revenues and constitutes failure to negotiate in good faith.

The Rincon Band and the State of California are currently negotiating under the Court's Order. A mediator has been appointed, but the matter is currently stayed by joint motion of the two governments.

Flandreau Santee Sioux v. South Dakota

DK# 4:07-CV-04040-LLP, (D. S.D. January 26, 2011)

2011 WL 2551379 (D.S.D. June 27,2011).

Tribe brought bad faith lawsuit under IGRA. Crux of dispute was arbitrary limit on machine numbers demanded by State of South Dakota. The litigation was ultimately settled by means of a new compact that doubled the number of

machines the Tribe may offer at its facility.

On June 27, 2011, the Court denied cross-motions for summary judgment, reasoning that the factual issue of good-faith negotiations must proceed to trial. Of important note is the Court's rejection of that portion of the *Rincon* decision which held that good faith must be determined on an objective standard. In *Rincon,* the District Court denied the Tribe's attempts to depose high-level state officials, reasoning that an IGRA lawsuit is to be based upon the Administrative Record (undefined).Here the Court expressly acknowledges that lack of good faith may be established on a subjective standard. This determination seems in conflict with the Court's earlier January 26, 2011 Order wherein it refused to allow South Dakota's Governor to be deposed in this matter.

• Big Lagoon Rancheria v. California

Case No. # C 09-01471 CW (JCS), (N.D. CA)

Sept.22, 2011 Court Appointed Magistrate Order Mediator's Selections of Appropriate Compact.

The Mediator selected the Big Lagoon Rancheria's last best offer of a compact. In a strongly worded opinion, the Court was very critical of the State's demands that the Tribe's gaming facility meet a myriad of strict environmental provisions because the Tribe's lands are on a pristine portion of California's northern coast. The Mediator stressed that the State may address gaming related issues, only.

II. WAIVERS OF TRIBAL IMMUNITY

Merrill v. Picayune Rancheria

DK # 1:10-CV-01155-OWW-SKO (E.D. Cal. Feb. 23, 2011)

USDC dismissed trip and fall patron who was dissatisfied with resolution of claim under Tribe's patron dispute ordinance. No waiver of Tribe's sovereign immunity.

Breakthrough Management Group v. Chuchchansi

629 F.3d 1173 (10th Cir. December 27, 2010)

Appeals Court reverses USDC, which had dismissed claims against only some, and not all, tribal official and tribal entity defendants in breach of contract dispute. Appeals Court reversed lower courts faulty analysis of whether named defendants were acting outside capacity of the Tribe or whether they were

protected by the Tribe's sovereign immunity. The Appeals Court ruled that all defendants were protected by tribal sovereign immunity and remanded with instructions to address whether immunity had been waived.

Merit Management Group v. Ponca Tribe

DK # 08 C 825 (D. N. Ill. April 19, 2011).

Default judgment vacated. Contract's limited waiver of Tribe's sovereign immunity limited to Tribal and Oklahoma state courts.

Hardy v. IGT, Inc.

2011 WL 3583745 (M.D.Ala.Aug.15,2011).

Problem gamblers filed lawsuits against vendors providing machines to Poarch Band of Creek Indians, alleging that gaming was illegal and but for machines being available at Poarch Band gaming facilities, they would not have become problem gamblers. The Court ruled that the Tribe was necessary and indispensible and immune and therefore dismissed the lawsuit.

Morrison v. Viejas Enterprises

2011 WL 3203107 (S.D.Cal. July 26,2011).

Employee of Tribe's gaming operation files suit alleging violations of Family Medical Leave Act (FMLA) among others. Plaintiff argued that FMLA applied to Tribes and, accordingly, Congress abrogated the Tribe's immunity. Citing the Second Circuit's decision in *Chayoon v. Chao,* 355 F.3d 14, the USDC ruled that FMLA does not apply to Tribes, and therefore sovereign immunity bars Plaintiff's claims.

Colmar v. Jackson Rancheria

No. CIV S-09-0742 DAD (E.D. Cal. June 15, 2011)

Employee claims for violation of the Age Discrimination Employment Act dismissed for lack of an effective waiver of tribal sovereign immunity.

Allman v. Creek Casino Wetumpka

2011 WL 2313706 (M.D.Ala. May 23,2011).

Disgruntled husband of employee was excluded from gaming facility owned and operated by Poarch Band of Creek Indians. He sued under various tort and constitutional discrimination claims. Magistrate recommends dismissal on sovereign immunity grounds but when on to reason that Plaintiff has no constitutionally protected interests, no ICRA remedy, and failed to exhaust tribal

remedies.

Bowen v. Mescalero Apache Tribe

Not Reported in P.3d, 2011 WL 704468 (N.M.App. January 27,2011).

Plaintiff was allegedly beaten and robbed by casino employee after winning $ 11,000.00. Appeals Court overruled lower court's decision that Tribe was immune. Court reasoned that incident covered by Compact's waiver, but otherwise upheld dismissal of lawsuit on grounds that Tribe could not have foreseen criminal act of employee.

III. DRAM SHOP LIABILITY CASES:

Furry v. Miccosukee Tribe of Indians of Florida

2011 WL 2747666 (S.D.Fla. JULY 13,2011).

Dismissed on sovereign immunity grounds

Mendoza v. Tamaya Enterprises, Inc.

150 N.M. 258, 258 P.3d 1050 (N.M. June 27,2011).

Pueblo of Santa Ana waived sovereign immunity in Tribal/State Compacts

.

IV. EXHAUSTION OF TRIBAL REMEDIES

Colombe v. Rosebud Sioux Tribe

2011 WL 3654412 (D.S.D. Aug. 17,2011)
2011 WL 4458795 (D.S.D. Sept.23, 2011).

Dispute over modification of management agreement between Tribe and company owned, in part, by former Tribal Chairman. Although most issues had been exhausted at the Tribal Court, the germane question of jurisdiction regarding the contract modification had not. Accordingly, that claim was dismissed in the federal court lawsuit, otherwise properly based on *National Farmer's Union.*

Wells Fargo Bank v. Maynahonah

2011 WL 3876255, 2011 WL 3876519 (W.D.Okla. Sept. 2,2011)

2011 WL 3022261 (W.D.Okla. July 22,2011).

After Wells Fargo prevailed in an arbitration award, the Tribal Business Committee and the Tribal Gaming Commission for Apache Tribe of Oklahoma allegedly took action to vacate the award. Wells filed this lawsuit seeking a Declaration that the Tribal entities lacked jurisdiction to vacate the award. The Gaming Commission sought dismissal based primarily on failure to exhaust. Court found that even though contract acknowledges obligation to exhaust, that Gaming Commission failed to present credible evidence that it has jurisdiction to decide issues raised in Complaint. Finding jurisdiction, the Court proceeded to issue a preliminary injunction enjoining the Commission from attempting to vacate the arbitrators award because Wells established a substantial likelihood of prevailing on the issue that the Commission exceeded its own jurisdiction.

Seely v. Harrah's Rincon Casino

2011 WL 2601019 (S.D.Cal. June 30,2011).

And

***Manoukian v. Harrah's Entertainment, Inc*.**

2011 WL 1343009 (S.D.Cal. April 7,2011).

USDC Remands Plaintiffs' tort claims to state court after finding no federal subject matter jurisdiction [Note – most judges in USDC for California's Southern District routinely accept removal of these patron tort claims and dismiss for failure to exhaust tribal remedies]

V. COMPACT INTERPRETATION

• Alturas Band v. CGCC,

DK # CIV-**S-11-2070 LKK/EFB (E.D. Cal. Aug. 8 2011)**

USDC issues TRO in Tribe's favor directing California Gambling Control Commission to distribute funds to Tribe. Compact language did not vest CGCC with any discretion as to whether to disburse funds.

VI. ELIGIBILITY OF "INDIAN LANDS": CASES RE 25 USC § 2719

The panels on Indian lands Eligibility will address numerous developments in this area outside of the courtroom. The cases below reflect developments inside the courtroom. Specific to the northwest, there is significant activity

occurring regarding Tribes in the region, including but not limited to Cowlitz, Warm Springs, Spokane and Samish.

At least two lawsuits have been filed against DOI's decision on Cowlitz's FFT application, one of them filed by Grand Ronde. We understand that the Administrative Record is either complete or near completion. However, to our knowledge, no substantive orders have yet to been issued. Of note, Clark County pursued the State of Washington to join the litigation. The State declined the invitation.

MATCH-E-BE-NASH-SHE-WISH (GUN LAKE)

Patchek v. Salazar

632 F.3d 702 (D.C. Cir. January 21, 2011)(*cert. pending)*

Federal Appeals Court rules that plaintiffs have standing to file lawsuit challenging DOI's approval of Match-E-Be-Nash-She-Wish (Gun Lake) Band's Fee to Trust application for lands on which the Tribe operates a viable Class III gaming facility. Plaintiff alleged standing due to impacts on use and enjoyment of nearby property. Plaintiff alleges that *Carcieri* applies to bar FTT applications for Gun Lake Band. Appeals Court reasoned that Plaintiff does have standing under a "zone of interests" analysis, and held APA § 702 provides the needed waiver of the United State's sovereign immunity. Further, the Court ruled that the lawsuit is not an action under the Quiet Title Act, which limits the time period and relief which may be sought against the United States. In doing so, the Court expressly acknowledges and rejects the analysis of the Ninth, Tenth and Eleventh Circuits which interpreted the Quiet Title Act to bar all after-the-fact challenges to lands already in trust status. This will be an important case to watch as SCOTUS considers granting cert.

LYTTON

Neighbors of Casino San Pablo v. Lytton Band of Pomo

773 F.Supp.2d 141 (D.D.C.March 30, 2011)

Plaintiffs allege that Land is illegally in trust status and that California possesses jurisdiction over such land. They further allege that NIGC acted illegally in approving a gaming ordinance for such lands. USDC dismissed lawsuit on several grounds, including standing, reasoning that the Plaintiffs are seeking to protect State of California's interests and not their own. Other grounds for dismissal include redressability and lack of final agency action. Court ruled there is no NIGC obligation to make Indian lands determinations in approving gaming ordinances unless the submitted Ordinance is site-specific. Court refused to get into Class II/Class III distinction based on NIGC discretion to not prosecute.

MIAMI TRIBE OF OKLAHOMA

Miami Tribe Of Oklahoma v. U.S.

656 F.3d 1129 (10th Cir. Aug. 30,2011)

Miami Tribe adopts members with trust allotment in Kansas and seeks to have land transferred to Tribe. The BIA first agrees and then reverses position because of possibility that Tribe may game on the lands in issue. The Court of Appeals remanded for reconsideration consistent with Court's determination that Miami Tribe could not exercise jurisdiction over any lands in Kansas.

This case has an odd procedural history where BIA appeals from a decision on which it prevailed.

KARUK

City of Yreka v. Salazar

2011 WL 2433660 (E.D.Cal. June 14,2011).

City of Yreka files suit to block FTT for a parcel of land in City on behalf of the Karuk Tribe. The City argued that the Tribe was truly intending to game on the parcel and DOI failed to consider gaming in its decision. The Tribe had previously sought an NIGC opinion that tribal lands in and near Yreka acquired after 1988 qualified under the restored lands exception. The Tribe received an unfavorable opinion and never appealed. The District Court reasoned that DOI did not err because any future gaming would need to comply with IGRA, including the two-part determination provisions.

BUENA VISTA TRIBE

Amador County, Cal. v. Salazar

640 F.3d 373 (D,C, App. May 6, 2011)

Appeals Court reverses District Court dismissal to County's challenge of "no action" approval of Buena Vista Band's Compact with California. The Appeals Court, citing *Patchek*, ruled the County did indeed have standing, and DOI's decision to allow the Buena Vista Compact to go into effect by the statutory passage of sixty days was a reviewable action under the APA.

Friends of Amador County v. Salazar

Slip Copy, 2011 WL 4709883 (E.D.Cal. Oct. 4, 2011).

Plaintiffs are an organized group that have been fighting for years against any gaming by the Buena Vista Band. The latest lawsuit challenges the legality of the compact and the underlying eligibility of the Tribe's restored lands for gaming. The Court applies classic Rule 19 analysis in granting the Tribe's (specially appearing) Motion to Dismiss.

TOHONO O'ODHOM

Three lawsuits were filed and two are still pending over T.O.'s proposed Glendale casino, which is based on the Tribe's claim that the lands pending for FTT qualify for gaming under the land claim settlement exception,

Arizona v. Tohono O'odhom Nation

2011 WL 2357833 (D.Ariz. June 15,2011).

The State's lawsuit contained two primary theories of liability: (1) the Compact limits the Tribe's ability to locate on newly acquired lands; and (2) the Tribe made fraudulent representations to the Tribe regarding casino locations when negotiating the compact. The Court allowed the first theory to proceed based on the Tribe's waiver of immunity in the compact, but dismissed the second theory because it is not based on breach of compact and therefore no waiver of immunity has been made.

The underlying facts at issue include representations from the Tribe during the negotiations and the campaign that no Arizona Tribes would not construct gaming facilities on newly acquired land in the greater Phoenix area. My own observation is that this decision may be fatal to the State's remaining theories because the four corners of the compact do not contain any express prohibition.

Gila River Indian Community v. U.S.

776 F.Supp.2d 977 (D.Ariz. March 3,2011)(appeal pending).

Gila River Indian Community and City of Glendale sued DOI for its decision to take certain lands into trust under a land claim settlement act. The crux of the lawsuit was that DOI abused its discretion in concluding that the lands qualified under the operative settlement act. Applying *Chevron* deference, the Court found no error. The Court also reasoned that the FTT was mandatory under the settlement act and therefore an EIS under NEPA was not required. Although T.O. prevailed, DOI is enjoined from completing FTT pending appeal.

T.O. v. City of Glendale

227 Ariz. 113, 253 P.3d 632, (AZ. App. Div. 1, May 03, 2011)

Although directly covering legal issues re Indian gaming, a third lawsuit was filed by the Tribe against the State and the City of Glendale alleging that a statute enacted by the Legislature to specifically allow the City to annex the land in question and further complicate the legal disputes was void and unenforceable. The Tribe ultimately prevailed

SENECA

Citizens Against Casino Gambling In Erie County v. Stevens

--- F.Supp.2d ----, 2011 WL 3844113 (W.D.N.Y. Aug. 30,2011)

The latest chapter in this saga is a discovery dispute wherein Plaintiffs seek redacted records regarding the NIGC's reversal of its position over the basis on gaming eligibility on the Buffalo parcels. The Court ruled that CAGE is entitled to some, but not all of the requested documents. This case engages in an analysis through each of the FOIA exceptions raised.

Citizens Against Casino Gambling in Erie County v. Hogen

417 Fed.Appx. 49 (2nd Cir. March 28, 2011)

After observing on the sidelines, the Seneca Nation decides it should intervene in action the crux of which is the allegation that the Buffalo lands at issue are not eligible for gaming. Surprisingly, the District Court denied the Tribe's motion, and surprisingly, the Appellate Court agreed. Seneca is allowed to participate as *amici.*

BAY MILLS INDIAN COMMUNITY

State of Michigan v. Bay Mills

1:10-cv-01278-PLM (W.D. Mich. March 29, 2011)(appeal pending)

The Court decided that the land claim settlement statute at issue only authorized new land acquisitions that are part of consolidating the Tribe's existing land base such that the acquired land must be adjacent, or at least near, the Tribe's existing trust lands. This is somewhat surprising – the court agreed that the Vanderbilt tract "enhanced" the Tribe's land base which appears to be authorized by the settlement statute at issue. To reason that the statute only allows enhancement of consolidation lands appears to me to be a stretch and arguably reversible error.

I had expected the Court to rule against Bay Mills on the grounds that the land at issue in not yet in trust and/or the Tribe is not exercising jurisdiction over the land because of its non-trust status. Bay Mills had argued that the fee land

was in restricted status, qualifying it under IGRA, but the Court did not reach that issue.

VII. MANAGEMENT CONTRACTS

Wells Fargo Bank, N.A. v. Lake of the Torches Economic Development Corp.,

658 F.3d 684 (7th Cir. Sept. 6, 2011)(rehearing en banc denied Oct. 28, 2011)

Affirming USDC holding that the indentures are unapproved management contracts and therefore void, BUT, held that the Tribal casino corporation was a citizen of Wisconsin for purposes of establishing diversity jurisdiction.

Wells Fargo Bank v. Sokaogon Chippewa Community (Mole Lake)

DK# 10-C-1039, 787 F.Supp.2d 867 (W.D. Wis. April 15, 2011)

USDC rejects Tribe's defense that bonds in question are unapproved management agreements and/or unapproved long-term encumbrances such that bonds are void. Court expressly distinguishes facts from *Lake of Torches.*

Marshall Invs. Corp. v Harrah's Operating Co., Inc.

82 A.D.3d 515, 918 N.Y.S.2d 451 (N.Y.A.D. 1 Dept. March 15,2011).

Lawsuit in bankruptcy seeks damages for tortious interference with contract. Court held that modifications to collateral documents to management agreement required NIGC approval. Without such approval, the underlying contract modifications are void. Accordingly, no claim for tortious interference is cognizable.

New Gaming Systems v. Sac and Fox Nation

DK# APL-08-01, CIV -05-01 (Sac and Fox Supreme Court June 16, 2011)

Gaming Company files lawsuit in Tribal Court alleging various causes of action sounding in contract. The Tribe's Supreme Court upheld the Tribal Court's decision that the contracts at issue constitute unapproved management contracts and are therefore void. The NIGC had previously opined that the contracts were unapproved management contracts. NGS attempted to assert waiver in the subject contracts as the basis for avoiding dismissal on sovereign immunity

grounds.

Horizon Engineering Services Co. v. Lakes Entertainment, Inc.

Not Reported in N.W.2d, 2011 WL 2303613 (Minn. App. June 13,2011).

The crux of this litigation is that Plaintiffs provided services to the Pawnee Nation towards a failed casino project. Lakes had a consulting agreement with the Tribe, so when the Plaintiff failed to get paid by the Tribe, it sued lakes under various theories of liability, and lost. Of significance, Plaintiffs alleged that Lakes and the Pawnee Nation had created a joint enterprise. In rejecting that analysis the Court relied, in part, on IGRA's requirement that the Tribe possess sole proprietary interest in the gaming facility.

See also, NIGC NOV re Fond du Lac, discussed below

VIII. SCOPE OF GAMING AND RELATED ISSUES

Here in the northwest, Tribes in both Oregon and Idaho have been hammered with lawsuits for several years attempting to reach the merits of claims that the compacts improperly authorize slot machines in violation of state law. The Tribes and the States have been successful for many years in having these challenges dismissed on procedural or jurisdictional grounds. In Oregon, the matter has now resulted in a Superior Court decision in favor of the Tribes, which is now on appeal. In Idaho, the latest challenge is now in the early stages addressing issues of jurisdiction and standing.

• ***State ex rel. Dewberry v. Kitzhauber –***

DK# CA A146366

PACT (People Against Casino Town) have filed several challenges in several courts all seeking to strike down compact between the Confederated Coos Tribe and the State of Oregon. The substantive claims are (1) the compact requires legislative ratification; and (2) the compact violates the State's constitutional prohibition against casinos. Last year, we reported that the State of Oregon and the Oregon Tribes prevailed on the merits in the Oregon State Superior Court. The appeal has now been fully briefed and awaits oral argument.

• ***Knox v.*** **U.S. Dept. of the Interior**

759 F.Supp.2d 1223 (D.Idaho Dec. 27, 2010)

S2011 WL 4431814 (D.Idaho, Sept. 22, 2011.

Two allegedly pathological gamblers file lawsuit against Idaho and DOI alleging they wrongfully approved the Proposition One Compacts because they violate the prohibition of slot machines in the Idaho Constitution.

On December 27, 2010, the Court Ordered that the State was immune, that the Complaint could not be amended to add the Idaho Tribes because they were immune. However, the Court denied the United States Motion to Dismiss because the U.S. is fully capable of representing the Tribe's interests, that the statute of limitations had not run and Plaintiffs' claims were redressable.

Thereafter, the Shoshone Bannock Tribes informed the United States that the plaintiffs had actually been excluded from the Fort Hall casino under the formal policies and procedures of the Gaming Commission. One was a voluntary exclusion and the other was an involuntary exclusion that was not appealed. The Tribes also reminded the United States that the machines in question were in commercial operation under a "safe-harbor" provision of the Shoshone Bannock Compact and that it governed Shoshone Bannock gaming operations, while the three Tribes in Northern Idaho were governed by the Proposition One Compacts. The United States sought reconsideration based on the new information and the Shoshone Bannock Tribes sought amicus status, which was granted.

On September 22, 2011, the Court denied the United States motion for reconsideration, but invited the United States to refile and noted that it would address the jurisdictional claims raised in the Tribes' amicus brief at the conclusion of limited discovery regarding standing and statutes of limitations.

Several motions regarding discovery disputes are currently pending.

IX. MUNICPAL AGREEMENTS

City of Duluth v. Fond du Lac Band of Lake Superior Chippewa

NIGC NOV-11-02 (July 12, 2011)

In my personal opinion, the boldest move to date by the Obama Administration to promote Tribe's rights and opportunities under IGRA is the NIGC's issuance of a Notice of Violation directing the Fond du Lac Band to refrain from payments to the City on the grounds that the agreement is void in violation of IGRA's sole proprietary interest rule, and IGRA's prohibition against taxation of tribal gaming revenues.

2011 WL 1832942 (D.Minn. April 28, 2011).

Per express language of agreement, which Court presumably holds to be valid and enforceable, City may compel Tribe into binding arbitration to determine the fees to be paid by the Tribe to the City.

2011 WL 721246, (D.Minn. Feb. 22, 2011).

District Court judge accepts, over Tribe's objections, Magistrates Recommendation to order binding arbitration and denies Tribes motion to stay pending NIGC decision on enforcement action.

2011 WL 721107 (D.Minn. Jan. 5, 2011).

Magistrate's Recommendation that Tribe's Motion to Stay based on NIGC's renewed look at enforcement action, be denied. Court reasoned that Tribe's claims that NIGC action will impact arbitration is too speculative.

X. COLLECTION OF GAMBLING DEBTS

Mohegan Tribal Gaming Authority v. Powers

Not Reported in A.3d, 2011 WL 1288693 (Conn.Super. March 10,2011).

State Court upholds collection by Tribal casino for bad patron debt. Court rejected debtor's public policy argument based on long-standing Conn. Law that gambling debts are unenforceable. The Court held that Legislature's subsequent actions sanctioning tribal-state compacts changed that public policy.

XI. PER CAPITA PAYMENTS

In Re Howley

446 B.R. 506 (U.S. Bankr. Kansas Feb 23, 2011)

U.S. Bankruptcy Court rules that Debtor's future contingent interest in per capita payments was properly ruled as property of the estate. Debtor is enrolled member of Prairie Band Potawatomi. The Court focused on difference between per capita ordinances of the Prairie Band and the Ho Chunk's Nation, which expressly excluded payment to creditors. See *In Re Fess*, 408 B.R. 792 (U.S. Bankr. Wis. 2009).

U.S. v. Pedro

2011 WL 2262226 (D.Ariz. May 16,2011).

Short U.S. Magistrate opinion with little analysis holds per capita payments to Inmate member of Gila River Indian Community subject to garnishment order.

XII. LABOR

Chickasaw Nation v. NLRB

DK# CIV-11-506-W (W.D. Okla. July 11, 2011)

USDC grants Tribe's motion for preliminary injunction. In concluding that the NLRA does not apply to tribes, the court strongly criticizes and refuses to adopt NLRB v. Cabazon as a proper interpretation of the law

Laramer v. Konoocti Vista Casino Resort

DK# NO. C 11-01061 JW (N.D. Cal. Sept. 9, 2011)

Employee of Tribe's gaming operation sues for failure to pay overtime in alleged violation of FLSA. Court dismissed on sovereign immunity grounds, reasoning that Tribe being subject to FLSA has no bearing on the issue of immunity.

XIII MISCELLANEOUS

Crosby Lodge Inc. v. National Indian Gaming Commission DK # 3:06-CV-00657-LRH-RAM (D.C. Nev. March 14, 2011)

Crosby Lodge is a non-Indian owned business on the Pyramid Lake Reservation that operates slot machines. The business is licensed by the Tribe and its gaming activities are expressly authorized by the Tribe's Compact with Nevada. NIGC issued an order that the business must pay 60% of the net profit from gaming to the Tribe, consistent with its interpretation of IGRA and NIGC regulations. Crosby Lodge paid the fees under protest and filed suit. The Court held that IGRA's 60% taxation rule was ambiguous, but that the NIGC's interpretation of that ambiguity and its promulgation of regulations was lawful, therefore, the business must pay the 60%.

Contour Spa at the Hard Rock, Inc. v. Seminole Tribe of Florida

2011 WL 1303163 (S.D.Fla. March 31,2011).

This case involves several claims arising out of the Seminole Tribe's decision to cancel the contractual relationship and evict plaintiffs from the gaming facility. The Court decision goes through a myriad of motions, dismisses some claims, not others, and remands others to State Court. Among the holdings of

interests are : (1) lease required approval of DOI and is therefore void; (2) Tribe's removal to federal court did not constitute a waiver of tribal immunity; (3) there is no equitable estoppel exception to the defense of sovereign immunity; (4) No cause of action under ICRA; (5) *Ex Parte Young* exception does not apply on this set of factual allegations.

Crawley v. Clear Channel Outdoor, Inc.

2011 WL 748162 (M.D. Fl. Feb. 24, 2011)

Plaintiffs seek damages against gaming vendors on grounds that they are jointly and severally liable for Plaintiffs losses at Seminole casinos because such gaming is allegedly illegal uncompacted Class III gaming. Lawsuit in USDC based on diversity jurisdiction. Court opinion keyed in on no plausible cause of action that would lie against vendors.

U.S. v. Livingston

2011 WL 347136 (E.D.Cal. Feb.2, 2011)

USDC denies motion to dismiss indictment for stealing from an Indian gaming facility.

END/END