

**TRIBAL COURT LITIGATION UPDATE  
(JANUARY 2005 – FEBRUARY 2006)**

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**I. Administrative Law**

**Budget and Finance Committee of the Navajo Nation Council v. Navajo Nation Office of Hearings and Appeals, 2006.NANN.0000001 (Navajo Nation Supreme Court 2006)**

(from the opinion) The issue in this case is whether the Supreme Court has the authority to issue a writ of prohibition against the Office of Hearings and Appeals when the Council has prohibited appellate review of OHA's decision. \*\*\* Though based on this decision, the Committee lacks a remedy from OHA's allegedly overly broad review in this case, it is the direct result of the Council's denial of appeals. Without the ability of this Court to bring the parties back into harmony, the Committee and OHA must work out their dispute, or the Council should review the statute and reconsider its prohibition on appeals.

**II. Civil Procedure**

**Cheyenne River Sioux Gas Co. v. Dupris, 32 Indian L. Rep. 6137 (Cheyenne River Sioux Tribal Court of Appeals 2005)**

An appeal following post-contempt proceedings where a defendant failed to appear—and later failed to pay—a judgment entered in small claims court. The court first held that litigants could retain counsel during contempt proceedings, due to the possibility of restraint upon liberty following such proceedings. Second, a writ of execution, rather than a contempt proceeding, is the appropriate method for the enforcement of a small claims judgment. Finally, forfeited appearance bonds may be transferred by the court to judgment creditors only after proper notice and hearing. Reversed.

**In re Crowe, 2005.NACE.000006 (Eastern Band of Cherokee Supreme Court 2005)**

Affirming the final determination of Election Board of the Eastern Band of Cherokee Indians in upholding the result of a tribal election for Principal Chief, the court found that tribal statute authorized the court to take jurisdiction over the case and applied a standard of review that deferred to the decision of the Election Board. Petitioner argued that ineligible members cast votes. The court noted that all ballots were cast anonymously and verified by the Election Board in accordance with tribal custom and tradition.

**Davis v. Park Place Apartments, 2005.NATM.0000001 (Turtle Mountain Band Appellate Court 2005)**

Allowing appeal where appellant sought filing fee waiver without making a showing of indigency, but dismissing appeal where appellant failed to appear for status conference.

**Gregoire v. Mashantucket Pequot Gaming Enterprise, 32 Indian L. Rep. 6007, 2004.NAMP.0000012 (Mashantucket Pequot Tribal Court 2004)**

A decision on a motion for the dismissal of the plaintiff's case for failing to ensure that the court clerk's office filed proof of service of process. The court determined that no penalty was required for failure to comply with local rules of civil procedure, that the failure to file resulted from an inadvertent error at the court clerk's office, and finally that service was sufficient in all other respects so as not to unduly prejudice the defendant. Motion denied.

**McCoy v. Walker, 2005.NACE.0000003 (Eastern Band of Cherokee Indians Court 2005)**

(from the opinion) The Defendant suggests that this is a case in which the Plaintiff tried to use the domestic violence statute to obtain *ex parte* custody of the minor child. However, in this case, Ms. McCoy neither sought nor was awarded custody of Beverly. Rather, she sought an Order protecting Beverly from what she believed was abusive behavior on Mr. Walker's part. While Mr. Walker was prohibited from having contact with Beverly for the few days that the case was pending, his custodial rights were not affected.

**Pearsall v. Tribal Council for the Confederated Tribes of the Grand Ronde, 32 Indian L. Rep. 6063 (Confederated Tribes of the Grand Ronde Community Tribal Court 2003)**

An appeal requesting dismissal of a complaint due to lack of standing and requesting sanctions for vexatious litigation. In this case, neither status as an elected tribal council member nor status as a tribal member conferred unto the petitioner standing to sue. The court did not impose sanctions, using its discretionary power.

**Whiteeagle v. Cloud, 32 Indian L. Rep. 6112 (Ho-Chunk Nation Trial Court 2004)**

A trial court decision where the plaintiffs sought declaratory judgments against a tribal council planning committee and individual members of that agency. The suit against the agency was dismissed, as there was no express waiver of sovereign immunity. The suits against the individuals were also dismissed, but not for reasons of sovereign immunity. No court remedy existed, as the individuals sued were no longer members of the tribal agency. Also, the plaintiffs lacked standing to sue. Dismissed.

**Whiteeagle v. Cloud, 32 Indian L. Rep. 6120 (Ho-Chunk Nation Supreme Court 2005)**

An appeal of the decision immediately preceding. Overall, the decision below was affirmed, with some differences in reasoning. First, the tribal agency was immune from suit, provided there was no evidence showing that it acted outside the scope of its authority. Second, the court held that the plaintiffs did have standing to sue, as the plaintiffs attended general council meetings, giving them a greater stake in the proceedings than non-attendees. However, the plaintiffs could not show harm, a second requirement for standing issues. Reversed in part, affirmed in part.

### **III. Commercial Law**

**Bank of Hoven v. Long Family Land and Cattle Co., Inc., 32 Indian L. Rep. 6001 (Cheyenne River Sioux Tribal Court of Appeals 2004)**

An appeal following a jury trial in tribal court where the defendant bank was found in breach of contract. The bank argued 1) that there was no subject matter jurisdiction; 2) that evidence showing a contract was improperly admitted; 3) that the cause of action pursued at trial did not exist under tribal law, and that the jury had insufficient evidence with which to return a verdict; 4) that it could not get a fair trial in Indian Country; 5) that its counterclaim for forcible entry and detainer were improperly dismissed; 6) that the court improvidently granted the plaintiffs options to purchase land claimed by the bank; 7) and that the pre-judgment interest awarded by the jury was incorrectly determined. All arguments failed.

The plaintiff Longs also appealed 1) the option to purchase land claimed by the bank, and 2) the calculation of pre-judgment interest. These arguments also failed. Affirmed.

**Bear Soldier District v. Bear Soldier Industries (Standing Rock Sioux Tribal Court 2005)**

Enforcing a jury verdict of \$722,000 plus interest and attorney fees, jointly and severally, against business, successor business, and individual defendant in his individual capacity. A jury found that the businesses and individual committed fraud in procuring a loan to renovate housing in the Bear Soldier District and failed to renovate the housing to make it habitable.

**Challenge Group, Inc., et al v. Davis, No. 04-011 (Turtle Mountain Band Appellate Court 2005), available at <http://www.turtle-mountain.cc.nd.us/cases.htm>**

An appeal from a tribal court decision granting a permanent injunction forbidding acceptance of new construction bids following re-advertisement of the government job. The appellate court determined that the four-pronged test for a preliminary injunction was not satisfied, and that there was no federal requirement that the tribe accept the lowest bid when advertising contracts. Reversed.

**Confederated Tribes of Grand Ronde v. Strategic Wealth Management, Inc., 32 Indian L. Rep. 6148 (Confederated Tribes of the Grand Ronde Community Tribal Court 2005)**

A tribal court decision holding that the tribe did not waive its sovereign immunity with respect to the affirmative award of prevailing party attorney fees and costs in any of the agreements it entered into with respondents, nor when it chose to file suit under the Oregon Securities Laws or when it stipulated to arbitrate its claims with respondents, and thus the arbitrators lacked authority to award prevailing party attorneys fees and costs, and the court concludes that absent a waiver of sovereign immunity, the court lacks jurisdiction to enforce an award.

**Navajo Nation v. Arviso, 2005.NANN.0000009 (Navajo Nation Supreme Court 2005)**

(from the opinion) The relevant facts are as follows. Bess and Arturo Arviso were the lessees to a twenty-five year business site lease with the Navajo Nation (Nation). The lease authorized the lessees' use of Navajo Nation trust land to operate a gas station in Crownpoint. The lease, which did not include a renewal or renegotiation clause, expired in October of 2001. Bess Arviso died in 1996 and Arturo Arviso died in 2002 shortly after the lease term expired. Alonzo Arviso (Alonzo), son to the former lessees, currently uses the business site without a lease agreement. After the lease expired, Alonzo made some attempt with the Bureau of Indian Affairs to discuss the creation of a lease agreement, but no agreement was ever made. The Nation filed a forcible detainer action under the forcible entry and detainer statute, 16 N.N.C. §§ 1801 et seq. (1995), to evict Alonzo and his brother from the property and to claim rent and interest. The Nation settled with the brother who is now off the premises. After a hearing, the Crownpoint District court dismissed the Nation's complaint because the court believed the Defendant had rights to the land as a "successor" to the lease as that term is used in section 34 of the expired lease, and that the Nation did not evict him properly based on those rights. \*\*\* The district court shall issue a writ of restitution ordering Alonzo Arviso's removal from the property and, if the Nation seeks rent, for a determination of rent.

#### **IV. Contracts**

**Goldtooth v. Naa Tsis' Aan Community School, 2005.NANN.0000008 (Navajo Nation Supreme Court 2005)**

(from the opinion) This case arises out of an employment contract allegedly created when an employee of the Naa Tsis' Aan Community School accepted an offer made by the school's executive director. Based on our review, we reverse the Navajo Nation Labor Commission.

**Malaterre v. Estate of St. Claire, No. 05-007 (Turtle Mountain Band Appellate Court 2006), available at <http://www.turtle-mountain.cc.nd.us/cases.htm>**

Affirming lower court order that parties had effectuated a valid “trade” of homes, despite the fact that no writing or collection of writings would have met the Statute of Frauds under American law and holding that the “trade” of the homes was consistent with the relationship of the parties at the time of the transaction.

## **V. Constitutional Law & Civil Rights**

### **Fox v. Brown, 2005.NAMT.0000004 (Mohegan Tribal Court of Appeals 2005)**

(from the opinion) In a claim for personal injuries allegedly resulting from the plaintiff's impact with a misaligned coat hook in a bathroom stall, the court finds that the plaintiff did not establish by a fair preponderance of credible evidence that the injury resulted from a breach of the defendant's duty to properly align or secure the coat hook. The plaintiff did not demonstrate that the defendant was on notice that the coat hook was misaligned or loose; he did not demonstrate that the coat hook, if misaligned or loose, gave rise to a hazardous condition that was the proximate cause of plaintiff's injuries. The court entered judgment for the defendant. The Plaintiff has asserted claims against the Council Members in their official capacity only. [T]he Court holds that tribal sovereign immunity bars the Plaintiff's claims against the Council Members in this action. Therefore, the Court lacks subject matter jurisdiction and this action is dismissed.

### **Jacobson v. Eastern Band of Cherokee Indians, 2005.NACE.0000001 (Eastern band of Cherokee Indians Tribal Court 2005)**

(from the opinion) The Plaintiff makes two types of equal protection claims: the first is based on equal protection of the Indian Civil Rights Act, 25 U.S.C. §§ 1301-1303. The second is based upon the equal protection clause of the Constitution of the United States. The Tribe argues that the Constitution's limitations on the authority of state and federal governments and agents do not apply to Indian Tribes, and thus the Plaintiff's federal equal protection must fail as the Court does not have subject matter jurisdiction to hear it. See *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 56 (1978). This argument is correct and this Court does not have subject matter jurisdiction over Plaintiff's federal equal protection claim. \*\*\* Therefore, the Tribe's interposition of its right of sovereign immunity works only to deny Plaintiff's claim for injunctive relief. The Tribe has waived sovereign immunity as to the Plaintiff's claim for a Declaratory Judgment that the Tribe has violated her rights under the ICRA.

### **Jefferson v. Crow Tribal Election Commission, No. 04-328 (Crow Court of Appeals 2005)**

(from the opinion) Calvin Jefferson, Jr., Vernon Whiteman, Richard Whiteclay, and Hubert Two Leggins appeal the order and judgment of the Crow Tribal Court (Yellowtail, J.) dated December 8, 2004, which affirmed the decision and order of the Crow Tribal Election Commission dated November 19, 2004. Because the Appellants have alleged no substantive deficiency of the Election Ordinance, and where the only alleged defect is the date it was adopted, we hold that the Election Ordinance is a valid

and constitutional legislative enactment. Accordingly, the Court of Appeals hereby affirms the decision of the Crow Tribal Court.

**Pearsall v. Tribal Council for the Confederated Tribes of the Grand Ronde Community of Oregon, 32 Indian L. Rep. 6064 (Confederated Tribes of the Grand Ronde Community Tribal Court 2004)**

An appeal from an appellate court ruling that the plaintiff had standing to sue the tribe and tribal officials regarding ethical proceedings that had previously been initiated. The court determined that the plaintiff did not have standing to sue, dismissing his complaint with prejudice. All motions for sanctions and attorneys fees were denied. Reversed.

**Pearsall v. Tribal Council, 32 Indian L. Rep. 6102, 2005.NAGR.0000003 (Confederated Tribes of the Grand Ronde Community Tribal Court 2005)**

(from the opinion) At issue is whether Tribal law required the Tribal Council to adopt written resolutions in public meetings to authorize the filing of motions to intervene and to stay in certain ongoing ethics proceedings. This case was tried to the court on remand from the Tribe's court of appeals on plaintiff's amended complaint seeking declaratory judgment and writ of mandamus. Witnesses testified and were cross examined, and extensive exhibits were received into the record. Having reviewed the evidence, the oral and written arguments, and the law, the court finds that the Tribal Council was not required to adopt written resolutions in public meetings to take the actions complained of, and holds that the case be dismissed.

**Turtle Mountain Judicial Board v. Turtle Mountain Band of Chippewa Indians, No. 04-007 (Turtle Mountain Band Appellate Court 2005), available at <http://www.turtle-mountain.cc.nd.us/cases.htm>**

An appeal from a tribal court order enjoining the Judicial Board from suspending any tribal court judges pending the drafting of new rules pertaining thereto. The court examined preliminary justiciability issues, including mootness and standing, determining that the issues on appeal were justiciable. The court then determined that the Judicial Board's previous actions in suspending a tribal court judge did not comport with due process under the tribal constitution, and it also invalidated a rule allowing for the immediate suspension of a tribal judge pending investigatory or disciplinary proceedings. The court rejected the Judicial Board's "unclean hands" argument as inapposite. The court then determined that, while the Judicial Board retained sovereign immunity from suit, in a particular circumstance where the tribe as a whole brings suit against one of its constituent agencies an exception must be made. The court also rejected the Board's arguments that this was a political question and that the Bureau of Indian Affairs was an indispensable party to the action. Affirmed in part; reversed in part.

**Whiteeagle v. Cloud, 32 Indian L. Rep. 6024 (Ho-Chunk Nation Supreme Court 2005)**

Appeal from a trial court's dismissal of suit against the tribe's General Council. Despite allegations that the General Council acted outside the scope of its constitutional authority, no evidence was shown, and the Council retained its sovereign immunity from suit. The court determined that the appellants had standing to sue, as participants of the General Council, but that the appellants failed to demonstrate concrete harm. Affirmed.

## **VI. Criminal Law**

### **Colville Confederated Tribes v. Defendant, 32 Indian L. Rep. 6101 (Confederated Tribes of the Colville Reservation Tribal Court 2005)**

Pursuant to a competency hearing, the court determined that a criminal defendant was incompetent to stand trial and unlikely to ever become competent to stand trial.

### **Confederated Salish and Kootenai Tribes v. Johnson, 32 Indian L. Rep. 6069 (Confederated Salish and Kootenai Tribes of the Flathead Reservation Court of Appeals 2005)**

An appeal to determine whether a criminal defendant was properly convicted, and whether restitution order was proper. The court determined that there was a sufficiency of evidence to convict the defendant. The restitution order was remanded for a new hearing, as the amount ordered was improperly arrived at. Affirmed in part; reversed in part.

### **Eastern Band of Cherokee Indians v. Beck, 2005.NACE.0000008 (Eastern Band of Cherokee Indians Tribal Court 2005)**

(from the opinion) The Tribe has consistently taken the position that this Defendant started the fight by barging in on Ms. Long and striking her. At that time, according to the Tribe, Ms. Long responded with far greater force than was necessary to defend herself, resulting in the severe beating of Ms. Beck for which Ms. Long was convicted by the jury. The Tribe has therefore alleged separate crimes, not a single one. It's theory is not inconsistent, but rather is consistent and reconcilable with its case against Ms. Long.

### **Eastern Band of Cherokee v. Torres, 2005.NACE.0000007 (Eastern Band of Cherokee Indians Supreme Court 2005)**

The Court affirmed the criminal jurisdiction of the tribal court over a citizen of Mexico, finding that no federal common or statutory law prohibited the exercise of tribal criminal jurisdiction over non-Indian aliens.

### **Eriacho v. Ramah District Court, 2005.NANN.0000001 (Navajo Nation Supreme Court 2005)**

(from the opinion) The relevant facts are as follows. Petitioner Eriacho (Eriacho) is a defendant in a pending criminal action in Ramah District Court. The court did not arraign

Eriacho, but instead Eriacho signed a waiver of arraignment form provided by the Chief Prosecutor of the Ramah Office of the Prosecutor. According to the parties, Eriacho went to the Office of the Prosecutor and told the Prosecutor that she did not want to appear at arraignment. The Prosecutor gave her a form apparently used by the Respondent Ramah District Court to record waivers of arraignment. Eriacho signed the form and submitted it to the Ramah District Court, which accepted the waiver. \*\*\* As Hozho'go requires meaningful notice and explanation of a right before a waiver of that right is effective, it requires, at a bare minimum, that the Nation give notice that the right to a jury trial may be waived by inaction. For notice to be meaningful, and therefore a waiver to be effective, the Navajo government must explain to the defendant that the jury trial right is not absolute, as it may be waived by doing nothing within a certain time. Absent this explanation, the information received by a defendant is incomplete, as it appears the right is automatic and perpetual, like the federal constitutional right. Without this information, the waiver by inaction is not truly knowing and intelligent, and would violate the defendant's right to due process. As the description of the right to jury trial in the waiver of arraignment form does not include a statement that the right must be exercised within fifteen days, Eriacho's failure to request it within that time was not a knowing and intelligent waiver.

**Marchand v. Colville Confederated Tribes, 32 Indian L. Rep. 6102, 2005.NACC.0000001 (Colville Confederated Tribes Court of Appeals 2005)**

An appeal to determine whether it the trial court erred in continuing a trial to allow the tribal prosecutor to locate witnesses. The court dismissed the case, without prejudice, stating that the trial court's actions were dilatory, harming the defendant's right to due process through a speedy trial. Reversed.

**Marion v. Turtle Mountain Band of Chippewa Indians, No. A11-02-92 (Turtle Mountain Band Appellate Court 2005), available at <http://www.turtle-mountain.cc.nd.us/cases.htm>**

An appeal from a criminal conviction. The court held that when the judge and the prosecutor are first cousins, the judge should recuse him or herself if requested to do so in a timely motion. Conviction vacated.

**Mellon v. Colville Confederated Tribes, 32 Indian L. Rep. 6021 (Colville Confederated Tribes Court of Appeals 2005)**

An appeal from a criminal conviction, where the appellate court affirmed: 1) the trial court's findings of jurisdiction over actions involved in fraudulent credit card use occurring both on and off the reservation; 2) the trial court's holding that the appellant's due process rights were not violated; 3) the grant of the appellee's motion to strike the deferred prosecution agreement initially submitted by both parties; and 4) the validity of the trial court's sentencing order. Affirmed.

**Muscogee (Creek Nation) v. One Thousand Four Hundred Sixty Three Dollars and 14/100, 32 Indian L. Rep. 6133 (Muscogee (Creek) Supreme Court 2005)**

An appeal contesting the validity of a civil forfeiture action initiated against a non-Indian's vehicle and the drugs and money contained therein, found in plain view after the driver illegally parked in a handicapped zone at a gaming facility located on Creek Nation treaty land. The proceedings were upheld, as the Nation's courts have civil adjudicatory jurisdiction over forfeiture proceedings including the forfeiture of controlled dangerous substances, vehicles used to transport or conceal controlled dangerous substances, and monies and currency found in close proximity of a forfeitable substance. Affirmed.

**Navajo Nation v. Morgan, 2005.NANN.0000018 (Navajo Nation Supreme Court 2005)**

(from the opinion) After the Defendant-Appellant had been incarcerated for over a month, the Crownpoint District Court denied his multiple requests to withdraw his guilty plea. The defendant appeals that denial in this case. We conclude that his guilty plea was not entered knowingly and intelligently, and remand the case for further proceedings.

## **VII. Debt Collection/Garnishment**

**Baker v. Sebastian, 2005.NAMP.0000021 (Mashantucket Pequot Tribal Court 2005)**

(from the opinion) This case presents the question of whether and under what circumstances the tribal court should recognize a foreign money judgment. The plaintiff, Patrick W. Baker, commenced the original action by writ, summons and complaint returned to the Superior Court for the State of Connecticut, New London Judicial District, on March 19, 2002, the action bearing a docket number of CV-02-0561519-S. The plaintiff alleged in his complaint that he was the victim of an assault perpetrated by the above-named defendants, Alfred Sebastian, Sr., Alfred Sebastian, Jr., and Leonard Murdock. At the time of commencement of the lawsuit, each of these defendants lived outside of tribal lands. \*\*\* While this court is reluctant to grant recognition to the present judgment, it cannot discern a strong public policy reason not to do so. The textual differences and the differing mechanics of notice contained in the General Statutes and Practice Book of Connecticut, as compared with the Mashantucket Tribal Laws and Rules of Civil Procedure, are not so great as to operate to preclude enforcement of the judgment on public policy grounds. The tribe has recognized both abode service and service by publication and so has Connecticut. The differences are not that substantial as is outlined above. In the absence of this court finding a strong public policy or substantial difference between Connecticut's abode service and publication and that of the Mashantucket Pequot Tribal Laws, this court must leave the issues raised in this opinion to the Tribal Council as the legislative branch of government. The legislative branch may well want to address the issue of the type of notice that is given in a foreign jurisdiction to one of its members.

**Mashantucket Pequot Gaming Enterprise v. Merchant Services, Inc., 32 Indian L. Rep. 6104, 2005.NAMP.0000009 (Mashantucket Pequot Tribal Court 2005)**

(from the opinion) In this debt collection action the plaintiff, Mashantucket Pequot Gaming Enterprise, alleges that the defendant, Merchant Services, Inc., applied for and was granted a line of credit to purchase goods and services pursuant to a contract dated June 17, 2002; that MSI utilized said line of credit to purchase goods and services during the weekend of October 3 through October 6, 2002 for a business-related function hosted by MSI at Foxwoods Resort Casino; and that the balance due the plaintiff from the defendant in the amount of \$68,248.59 has not been paid. By way of its Amended First Special Defense, the defendant asserts that it was improperly billed by the plaintiff. The defendant claims that it should have received a credit against its bill “for levels of gaming engaged in by the defendant’s guests.” This claim by the defendant is based on representations made to MSI by a Foxwoods employee, which also included a credit for wampum points earned by the attendees at the MSI event. In its Amended Second Special Defense, the defendant asserts that a credit should be issued against its bill because the entertainment and food services provided at the MSI event were substandard and not in accordance with the terms of the contract. \*\*\* In conclusion, the court finds that the reasonable value of the goods and services provided to the defendant was \$68,248.59, less a wampum point credit due in the amount of \$13,568.00. Therefore, the court enters judgment in favor of the plaintiff in the amount of \$54,680.59.

**Tiger v. Seymour, 32 Indian L. Rep. 6006 (Cheyenne River Sioux Tribal Court of Appeals 2004)**

A tribal court opinion, where petitioner argued that her judgment of \$209,547.70 against respondent was not discharged by his bankruptcy filing in U.S. Bankruptcy Court. Notwithstanding petitioner’s argument that to allow discharge in federal court somehow impugns the sovereign immunity of the tribal court, the debt was held discharged.

**State of North Carolina ex rel. Maney v. Maney, 2005.NACE.0000002 (Eastern Band of Cherokee Indians Supreme Court 2005)**

(from the opinion) We hold that Cherokee Code 110-2A (b) (3), as of May 04, 2004, did not violate the Indian Civil Rights Act or impair the obligation of any contract of defendant, and was a valid ordinance of the Eastern Band of Cherokee Indians. This decision is in accord with the culture and traditions of the Eastern Band of Cherokee Indians in securing support for the Tribe’s children, especially where a responsible parent by a deliberate criminal act has impaired or destroyed support for a child.

**Mashantucket Pequot Gaming Enterprise v. Freund, 2005.NAMP.0000006 (Mashantucket Pequot Tribal Court 2005)**

(from the opinion) This is a debt collection action. The defendant applied for and received a line of credit from the plaintiff, the Mashantucket Pequot Gaming Enterprise. Between July 27, 2001 and September 1, 2001, the defendant made use of the line of

credit and borrowed \$20,500.00 from the plaintiff. The debt is evidenced by two counter checks, or “markers,” signed by the defendant, one in the amount of \$12,000.00 and the other in the amount of \$8,500.00. Markers are held by the plaintiff for a specified period of time. If a customer’s loan is repaid within that period of time, the markers are returned to the customer. If the loan is not repaid within the specified time, the checks are negotiated by the plaintiff. Here, the loan was not paid by the defendant within the specified time. The plaintiff deposited the checks for collection, but they were dishonored by the defendant’s bank. \*\*\* The defendant’s affirmative defense of lack of financial ability to repay the loan is dismissed. Judgment on the affirmative defense of incapacity shall enter for the plaintiff. Judgment on the complaint shall enter for the plaintiff in the amount of \$20,500.00 plus interest, attorney’s fees and costs.

**Mathiason v. Gate City Bank, 2005.NATM.0000002 (Turtle Mountain Band Appellate Court 2005)**

An appeal contesting an order for judgment, where the debtor filed suit against the defendant, requesting a lien be placed upon three vehicles giving rise to the debt. The appellate court held that strict compliance with court rules regarding failure to file an appellate brief and failure to properly file proof of service was unnecessary, where such construction would limit access to the courts and the other party suffered no prejudicial effects resulting therefrom. The appellate court also vacated the tribal court’s judgment for failure to hold a hearing before issuing its judgment, a violation of due process. Finally, the debtor’s complaint was dismissed for failure to state a claim that was legally cognizable under the tribal code.

**GMAC v. Mathiason, No. 05-002 (Turtle Mountain Band Appellate Court 2005), available at <http://www.turtle-mountain.cc.nd.us/cases.htm>**

An appeal following the repossession of a debtor’s pickup truck. The creditor auto financing agency filed a complaint in tribal court and appealed the court’s action in restructuring the debtor’s payment schedule for the truck. The creditor withdrew its appeal upon repossession of the truck. However, the debtor then answered the creditor’s complaint and counterclaimed against the creditor and an auto dealership keeping possession of the truck.

The validity of the tribal court’s contract reformation was unquestioned, as this action had become moot. The debtor’s counterclaim for wrongful repossession is upheld, as the creditor failed to follow tribal law regarding replevin, mandating a \$500 sanction and *de minimis* damages for the debtor. Reversed in part; affirmed in part.

## **VIII. Education**

**Speidel v. Mohegan Tribe of Indians of Connecticut, 2005.NAMT.0000005 (Mohegan Tribal Court of Appeals 2005)**

(from the opinion) The grantor trusts established by the Tribe under M.T.O. 2001-08 are intended to provide for the future welfare of minor tribal members. M.T.O. 2001-08, Section I. The preservation of trust assets for the future of the two minor children is therefore paramount, and in the absence of exceptional circumstances, which do not exist in this case, no distributions from their trusts should be made. The current health, education and welfare expenses for the two minor children are well within the financial ability of their parents to meet, and therefore it is not necessary to distribute monies from their grantor trusts for the current year. For the foregoing reasons, the Court denies the Petitioner's request for distribution of per capita funds from trust, to defray the 2005-2006 school year educational expenses for [Names Redacted].

## **IX. Elections**

### **Funmaker v. Ho-Chunk Nation Election Board, 32 Indian L. Rep. 6104 (Ho-Chunk Nation Supreme Court 2005)**

An appeal concerning tribal constitutional rules for the election of supreme court justices. The court determined that the Election Board erred in holding a primary election when only two candidates were certified—a situation calling for a general election. The court then ordered a general election.

### **Funmaker-Romano v. Ho-Chunk Nation Election Board, 32 Indian L. Rep. 6156 (Ho-Chunk Nation Supreme Court 2005)**

An appeal concerning two violations of tribal election law. The reviewing court overruled prior caselaw that stated these violations must be proven, beyond a reasonable doubt, to have affected the outcome of the election. The court then affirmed the trial court's holdings 1) that an election worker asking voters for identification, and 2) that a last-second change in the location of a polling site did not affect the ultimate results of the election. Further, rules expediting discovery during an election challenge were held not to violate the appellant's due process rights.

### **LaDue v. Trenton Indian Service Area Election Board, No. 05-012 (Turtle Mountain Band Appellate Court 2005), available at <http://www.turtle-mountain.cc.nd.us/cases.htm>**

An appeal from a final judgment, dismissed by court because the appellants were not parties to the original action, thus lacking standing to petition for appeal under the tribal code.

## **X. Employment**

### **Beebe v Ho-Chunk Nation, 32 Indian L. Rep. 6155 (Ho-Chunk Nation Supreme Court 2005)**

An appeal following a successful wrongful termination claim. The plaintiff argued that the Nation's Limited Waiver of Sovereign Immunity, which set a cap on the award received at trial, effected a taking of his property, or denied him due process and equal protection under the HCN Constitution. Notwithstanding the plaintiff's claims, the trial court's final judgment was affirmed.

**Colville Tribal Enterprise Corp. v. Administrative Law Court, 32 Indian L. Rep. 6077 (Colville Confederated Tribes Court of Appeals 2005)**

A request for a writ of prohibition by the tribal gaming corporation, which sought to block the reinstatement of an employee who was found, during an employment appeal before an Administrative Court Judge, not to have committed theft. The court held that, while the administrative court is not on equal footing with the tribal court (thereby not meriting appeals directly to the supreme court), an exception lies in this case, because the same people are often trial judges and administrative judges. However, the gaming corporation could not meet the standard for a writ of prohibition.

**Davidson v. Mohegan Tribal Gaming Authority, 2005.NAMG.0000002 (Mohegan Tribe Gaming Disputes Trial Court 2005)**

(from the opinion) The issues in this Discriminatory Employment Practices action are whether the Plaintiff has stated a cause of action under Mohegan law for which the Defendant has waived its sovereign immunity and, if so, whether the cause of action must be dismissed because the complaint was filed outside the time limits imposed by the Mohegan Ordinance M.T.O. 2002-04. The Court holds that the answer to both questions is "yes," and that the action is dismissed as time-barred.

**Etsitty v. Dine Bii Ass'n for Disable Citizens, Inc., 2005.NANN.0000015 (Navajo Nation Supreme Court 2005)**

(from the opinion) This case concerns whether Appellant was an "employee" or an "independent contractor" when Appellee did not renew her contract. We remand the case to the Navajo Nation Labor Commission for further proceedings. \*\*\* This Court has never considered whether Navajo law recognizes the employee/ independent contractor distinction. In bilagáana employment law, persons providing services are classified either as "employees" or "independent contractors." The distinction defines the responsibilities of the person or organization paying for the services to withhold taxes, to comply with labor laws protecting "employees," and to compensate tort victims. \*\*\* Though the Commission apparently concluded that Etsitty was an "independent contractor," it did not define the term or identify a source for its reasoning. The Commission relied on several facts that suggest it applied a test that emphasizes the level of supervision by Dine Bii over Etsitty's activities, as well as the difference between Etsitty's treatment and those identified as "employees" in Dine Bii's personnel manual.

**Fall v. Grand Traverse Band of Ottawa and Chippewa Indians, No. 03-07-560 (Grand Traverse Band Tribal Appellate Court 2006)**

Holding that where the tribal council delegates authority to the tribal manager to discharge employees, the tribal manager's decision to discharge an employee is within the scope of her duties and therefore she enjoys immunity from suit.

**Governmental Services Division ex rel. Pelky v. Murray, 2005.NAOW.0000061 (Oneida Appeals Commission Appellate Court 2005)**

(from the opinion) Although Mr. Murray was not dealt with in an equitable manner, his management role in this case makes him partially culpable. As a Manager, Mr. Murray is held to a higher standard than a subordinate, as are all Management Personnel. It would only seem reasonable that a person in a high management position such as Mr. Murray's would recognize that there needed to be a policy in place for the protection of Oneida Recreation Employee's and Oneida Tribal property. In this instance, the act of taking home tribal property without a policy in place, by employee's and tribal members, was a practice that was on going for some time. This Appellate Body must then acknowledge that Mr. Murray is partially at fault for misuse of tribal property due to his failure of not acting to correct the situation, as are the Directors of Governmental Services and the General Manager. This Appellate Body agrees with the Oneida Personnel Commission that Mr. Murray was within his scope of authority when he accepted delivery of tribal property at his residence, and therefore termination was an excessive punishment. Mr. Murray is to be re-instated to his position as Area Manager for the Oneida Health Fitness Department immediately with all back pay and benefits to make him whole. Due to the mishandling of this situation by the Oneida Chief of Police, this matter shall be expunged from the Respondent's record. However, because of Mr. Murray's position as the Fitness and Recreation Manager, and his culpability in this matter, this Appellate Body will not award him attorney's fees and costs as he requested.

**Gwin v. Four Bears Casino, 32 Indian L. Rep. 6066 (Northern Plains Intertribal Court of Appeals 2005)**

An employment appeal concerning a reviewing trial court's order finding errors in a Third Party Administrator's decision. The appellate court held that trial courts reviewing administrative findings must, upon finding error, remand for further proceedings, rather than issuing their own orders. Reversed.

**Hood v. Navajo Nation Dept. of Headstart, 2006.NANN.0000002 (Navajo Nation Supreme Court 2006)**

(from the opinion) The Navajo Nation Labor Commission (Commission) rejected an employee's allegations why a termination was unlawful, but nonetheless ruled the termination was unlawful based on other allegations not asserted in the complaint. The Court holds that the Commission's resort to new allegations was improper, and vacates the Commission's decision and dismisses the complaint. \*\*\* First, the allegations first asserted by the employee in his or her charge define the scope of the allegations throughout the process. That is, the allegations in the complaint must track the allegations

in the charge, less those that have been settled. Second, the Labor Commission is the last stage in a carefully constructed series of procedural stages designed to inform the employer what it is accused of doing and to limit the issues to meritorious ones actually in dispute. Third, the Commission is not a party to the proceeding, but a tribunal that hears the evidence presented to it, based on the theories asserted by the charge and carried through to the complaint. Through this procedure the NPEA guarantees due process by alerting the employer at several stages what allegations need to be addressed. In conclusion, based on fundamental principles of due process, as implemented by the NPEA dispute resolution structure, the Commission is limited to the allegations arising from the charge, and, after the ONLR process is complete, those remaining allegations clearly asserted in the complaint. Consequently, the Commission cannot go beyond those allegations to establish its own reasons to uphold or deny the termination. The Commission therefore erred in this case.

**Horn v. Mashantucket Pequot Gaming Enterprise, 2005.NAMP.0000012, 32 Indian L. Rep. 6159 (Mashantucket Pequot Tribal Court 2005)**

An employment appeal holding that the President/CEO of the tribal gaming enterprise did not act in an arbitrary or capricious manner in firing an employee for rude or discourteous conduct. Specifically, the court held that the President/CEO 1) had a reasonable basis for believing that the violations occurred; 2) complied with policies and procedures regarding discipline; and 3) did not commit an abuse of discretion in upholding the plaintiff's termination.

**Hu v. Office of Director of Regulation, 2005.NAMG.0000003 (Mohegan Tribe Gaming Disputes Trial Court 2005)**

(from the opinion) Time limitations set forth in limited waivers of sovereign immunity are jurisdictional and non-waivable. \*\*\* The conclusion is therefore inescapable that the Plaintiff's appeal was filed with the Clerk of the Gaming Disputes Court well beyond the twenty day period mandated by MTO 2002-13 Section 3(c). The Defendant's Motion to Dismiss must be granted.

**Kesoli v. Anderson Security Agency, 2005.NANN.0000013 (Navajo Nation Supreme Court 2005)**

(from the holding) A security company supervisor shouted at his subordinates and was terminated by his employer. We conclude that, under the circumstances, the supervisor's conduct constitutes "harassment," and therefore "just cause" for termination. We therefore reverse the Navajo Nation Labor Commission.

**LaVigne v. Mohegan Tribe of Indians of Connecticut, 32 Indian L. Rep. 6029 (Mohegan Tribal Court 2004)**

A Motion *In Limine* before the tribal court seeking a ruling on whether the plaintiff's counsel may interview, *ex parte*, certain tribal employees. The court upheld the motion,

despite the fact that no motion titled such existed under the Rules of Practice and Procedure. The court treated the motion as one for an Order Concerning Access to Witnesses, allowing the plaintiff access to those witnesses upon submission of a list of proposed witnesses. The court also allowed the defendant the opportunity to object to witnesses named on the list.

**LaVigne v. Mohegan Tribe of Indians of Connecticut, 32 Indian L. Rep. 6031 (Mohegan Tribal Court 2004)**

Motions for Protective Orders before the trial court, based on the defendant's objections to the plaintiff's requests to access certain witnesses under the scheme outlined above. Some of the motions were denied; the others were granted due to the witnesses protection under the attorney-client privilege doctrine.

**LaVigne v. Mohegan Tribe of Indians of Connecticut, 32 Indian L. Rep. 6044 (Mohegan Tribal Court 2005)**

An appeal of the defendant's successful Motion for Summary Judgment in the case described above. Summary judgment was upheld on de novo review, as 1) there were no genuine issues of material fact; 2) the circumstances of the plaintiff's firing did not fit the statute prohibiting retaliatory termination; 3) the plaintiff was afforded due process during the proceedings leading up to his termination; and 4) the plaintiff's claim against the tribe was barred by sovereign immunity.

**McGee v. Spirit Mountain Gaming, Inc., 32 Indian L. Rep. 6011 (Confederated Tribes of the Grand Ronde Community of Oregon Tribal Court 2004)**

A tribal court opinion granting and denying various motions. The petitioner's request for an "automatic stay" of proceedings pursuant to filing bankruptcy in federal district court was denied, because the stays apply to creditors' actions against debtors, and the petitioner actually filed suit for wrongful termination in this case. The petitioner failed to make showing that certain video surveillance recordings under a protection order needed to be made available to the public. The petitioner also failed to show that the respondent tribe had waived its sovereign immunity from suit in this case, and he failed to state a claim against the tribe upon which relief can be granted. The petitioner's motion to expedite the proceedings was granted.

**McGee v. Spirit Mountain Gaming, Inc., 32 Indian L. Rep. 6014 (Confederated Tribes of the Grand Ronde Community of Oregon Tribal Court 2004)**

A tribal court opinion denying the petitioner's request to bifurcate the proceedings and allowing the petitioner to supplement the record with certain requested materials. The court denied bifurcation, as the constitutional issues asserted by the petitioner were secondary to his other claims. The court allowed supplementation of the record because 1) the agency's decision may be better explained that way; 2) the agency's decision may

be too technical to be understood without further information; and 3) the court is justified in looking past administrative records when bad faith is claimed.

**Morigeau v. Confederated Salish and Kootenai Tribes, 32 Indian L. Rep. 6071 (Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation Court of Appeals 2005)**

An appeal concerning construction of tribal law as applying to procedures for employee grievances. The appellate court held that 1) arbitration proceedings tolled the statute of limitations; 2) costs of arbitration must be borne by the tribal government if the claimant chooses to retain an attorney; 3) trial de novo may be ordered if arbitration comes to naught; and 4) arbitration may be waived, and the parties may proceed directly to trial.

**Oneida Police Dept. ex rel. Cornelius v. Skenadore, 2005.NAOW.000059 (Oneida Appeals Commission Appellate Court 2005)**

(from the opinion) Ms. Skenadore has had to endure undue hardship because her termination appeal was heard in the improper forum. It is not Ms. Skenadore's fault that the Police Commission heard this matter improperly, because she was told to bring her claim there. Therefore, this Court in the interest of administration of justice makes the following order: 1) The Appellate Court orders the reinstatement of Ms. Skenadore to her original position as the office manager of the Oneida Police Department; 2) with this reinstatement Ms. Skenadore will receive her salary including any salary increases for that position that may have occurred since her termination; 3) Ms. Skenadore will receive all benefits, any and all compensation (i.e. back pay) that would have been afforded her as though she never left. The total amount of back pay will be less any money Ms. Skenadore received from Unemployment Compensation since her termination.

**Ostrowski v. Ho-Chunk Nation, 32 Indian L. Rep. 6110 (Ho-Chunk Nation Supreme Court 2005)**

An appeal reversing the determination of a trial court judge in an employment action. The trial court failed to support its judgment with findings of fact and conclusions of law that would inform reviewing parties as to the basis for its decision. Reversed, and the appellant's filing fees were ordered refunded.

**Procaccino v. Mashantucket Pequot Gaming Enterprise, 2005.NAMP.0000007, 32 Indian L. Rep. 6125 (Mashantucket Pequot Court of Appeals 2005)**

An appeal determining that it was not error for the trial court to dismiss the appellant's appeal of the Gaming Enterprise's termination of her employment. The appellate court held that 1) the Gaming Enterprise did substantially comply with its internal procedures prior to the appellant's termination, and that 2) the President/CEO of the Gaming Enterprise gave the appellant a chance to explain any mitigating circumstances. Affirmed.

**Sells v. Rough Rock Community School, 2005.NANN.000005 (Navajo Nation Supreme Court 2005)**

Affirming the decision of the Navajo Nation Labor Commission, which had held that the Rough Rock Community School had adequately paid two short-term employees teaching weaving and beadwork.

**Smith v. Navajo Nation Dept. of Headstart, 2005.NANN.0000011 (Navajo Nation Supreme Court 2005)**

(from the opinion) An explicit rule in the Navajo Nation Personnel Policies provides that failure to call or report to a supervisor for three days will subject an employee to termination. Is such failure “just cause” for termination under the Navajo Preference in Employment Act? Under the circumstances of this case we affirm the Navajo Nation Labor Commission that the employee violated the rule and uphold the termination.

**Strickland v. Decoteau, No. 04-003 (Turtle Mountain Band Appellate Court 2005), available at <http://www.turtle-mountain.cc.nd.us/cases.htm>**

An employment appeal by a tribal casino and its employees, where the trial court held that the plaintiff’s suit was not barred by sovereign immunity. The appellate court reversed, holding that the casino functioned as an arm of the government and was thereby entitled to a sovereign immunity defense. Further, the court held that the casino did not act outside its scope of authority in administering its drug testing policy. Reversed.

**Takes Enemy v. Crow Tribe, No. 04-168 (Crow Tribe Court of Appeals 2003)**

(from the opinion) This is an appeal of a May 23, 2001, decision by the Crow Tribal Court (Stewart, J.) to dismiss Plaintiffs’ class action complaint, with prejudice. The Crow Court of Appeals is asked to decide whether the Crow Tribal Court correctly concluded that tribal sovereign immunity barred the Plaintiffs’ claims. The Plaintiffs represent a class of individuals whose tribal employment was terminated upon a change in tribal leadership. They assert that the grievance procedure described in the Crow Tribal Personnel Practices and Policy Manual constitutes an express waiver of Crow tribal sovereign immunity, and that they are thus eligible to sue the Tribe for severance pay and other damages associated with what they assert was a wrongful discharge. Because this Court holds that tribal sovereign immunity prevents this suit against the Crow Tribe, and because the Policy Manual’s grievance procedure is not an explicit waiver of that immunity, the Crow Tribal Court’s decision is AFFIRMED.

**Taylor v. Dilcon Community School, 2005.NANN.0000012 (Navajo Nation Supreme Court 2005)**

(from the opinion) This appeal concerns whether or not the Navajo Nation Labor Commission (Commission) may dismiss an employee’s complaint for an alleged failure

to exhaust remedies provided by an employer. The Court concludes the Commission may not, and remands the case back to the Commission for further proceedings.

**Upson v. Office of Director of Regulation, 2005.NAMG.0000001 (Mohegan Tribe Gaming Disputes Trial Court 2005)**

(from the opinion) The plaintiff, Dianne Upson, appeals from a Mohegan Tribal Gaming Commission (MTGC) decision upholding an Order of the Office of the Director of Regulation (the Director) terminating her employment, suspending her gaming license and barring her from the Casino, as the result of an investigation regarding overrating of a patron's card. The conduct of plaintiff occurred on September 25 and 26, 2002 and October 2 and 3, 2002, when she overrated a patron while employed as a Floorperson for the Mohegan Sun Casino in violation of casino policy and procedures. The overrating allowed the patron to receive comp points to which he was not entitled. \*\*\* In denying the plaintiff's appeal, the court holds that the MTGC properly upheld the Director's order of termination, suspension and barrment of the plaintiff based upon the admitted facts and substantial evidence on the record.

**Watt v. Schott, 32 Indian L. Rep. 6146 (Colville Confederated Tribes Tribal Court 2005)**

An appellate decision holding that the appellant's right to due process was violated when the trial court found good cause to reopen a case in which the court had already ruled in the appellant's favor, and then failed to state a reason for its good cause finding. Reversed.

**Wheelock v. Oneida Nation Recreation Dept., 2005.NAOW.0000060 (Oneida Appeals Commission Appellate Court 2005)**

(from the opinion) This case is in regard to the Appellants termination when she was terminated for allegedly stealing three hundred dollars from another person's purse during a break while taking a class at the Career Center on October 3, 2003. When the Oneida Police investigated the incident on October 3, 2003, the police officer discovered the three hundred dollar bills in the Appellant's pocket. The Appellant claimed the officer made her write a statement through intimidation wherein she admitted that she took the money. In the statement she also apologized to the victim Ms. Metoxen. The Appellant appealed the termination to the Oneida Personnel Commission based on her claim that she was coerced and intimidated by the Oneida police officer to write the statement of admission of theft and that the Recreation Director was not following procedure in the Blue Book wherein the immediate supervisor discussed the action with the employee being disciplined. \*\*\* The decision of the Oneida Personnel Commission is affirmed. The termination of Ms. Lillian Wheelock is upheld.

## **XI. Family Law**

**In re Welfare of A.T., 32 Indian L. Rep. 6139 (Colville Confederated Tribes Court of Appeals 2005)**

An appeal from an order granting a petition for Minor-In-Need-Of-Care (“MINOC”) status. The appellate court concluded that the appellant mother of the children was not afforded due process. The MINOC law requires clear and convincing evidence, which was not met, because the court failed to make a complete, reviewable record of the findings and conclusions warranting MINOC status. Vacated and remanded.

**In the Interest of B.E.Y. and N.R.Y., 32 Indian L. Rep. 6109 (Ho-Chunk Nation Supreme Court 2005)**

An appeal following a trial court’s order in a child/family protection proceeding. The appellate court held that the appellant should have been notified of his right to be represented by counsel at the commencement of trial, though that error was held harmless. The appellate court could not determine if the acts and omissions of the HCN Children and Family Services Dept. deprived the appellant of due process, as that would require a factual determination. Further, the court could not address the issue of bias in Guardians ad Litem, as there were no established rules in that regard. Finally, the appeal was so drawn out as to render the underlying cause of action moot.

**Begay v. Chief, 2005.NANN.000004 (Navajo Nation Supreme Court 2005)**

(from the opinion) This case concerns whether a person married through a traditional wedding ceremony must receive a decree by a Navajo Nation court to be validly divorced within the Navajo Nation. We hold that the Navajo Nation Code requires a divorce decree, and therefore vacate the Kayenta Family Court’s decision.

**Colville Confederated Tribes v. Sutton, 32 Indian L. Rep. 6037 (Colville Confederated Tribes Tribal Court 2005)**

An appeal in a criminal action for child endangerment. The appellate court first concluded that, even if a pregnant woman’s methamphetamine use (that resulted in fetal ingestion of the drug) took place off-reservation, the trial court retained jurisdiction over the matter. The appellate court saw no need to determine whether the child endangerment statute covered unborn children, as the harm continued after childbirth. The appellate court rejected the appellant’s void-for-vagueness and ex post facto arguments. The pre-natal drug screen of the defendant mother did not violate her right to privacy. The defendant mother’s argument that pre-natal drug screenings will have a chilling effect on those seeking pre-natal care was rejected. Finally, the defendant mother’s argument that she was required to undergo pre-natal drug screening because of a racial bias was rejected for a lack of supporting evidence.

**Crim v. Baker, 2005.NACC.0000002, 32 Indian L. Rep. 6141 (Colville Confederated Tribes Court of Appeals 2005)**

An appeal concerning a trial court's order dividing a former couple's property. The appellate court held that the trial court did not clearly err regarding most of the property, remanding certain items for a correct determination of value and ownership. The appellate court further stated that this determination could not be accomplished through mediation, as both parties had restraining orders against one another.

**Cutting v. Quidgeon, 32 Indian L. Rep. 6163 (Mohegan Tribal Court 2005)**

A tribal court decision regarding a tribal resolution that provided for recognition and enforcement of child support orders issued by foreign courts. The court determined that two policy reasons backed the resolution: 1) that Mohegan Tribal Members support their children; and 2) that court-ordered child support for the children of Mohegan Tribal members be paid. Under this analysis, the court further determined that "children," as construed in the resolution, meant all children of enrolled tribal members, though the children themselves need not be enrolled.

**In re Matter of G.C., 32 Indian L. Rep. 6073, 2005.NAGR.0000001 (Confederated Tribes of the Grand Ronde Community of Oregon Court of Appeals 2005)**

An appeal concerning whether the trial court abused its discretion in changing a permanency plan from "return of custody" to "adoption." The appellate court held there was no abuse of discretion, as the trial court selected one of a variety of legally permissible options, based on the child's best interests. Affirmed.

**In re Welfare of J.L.V., 2005.NACC.0000003, 32 Indian L. Rep. 6142 (Colville Confederated Tribes Court of Appeals 2005)**

An appeal regarding an order excluding the natural father from consideration for the placement of his children. The appellate court held that the trial court erred in failing to identify and weigh the appropriate legal factors for this determination, and that the trial court assigned improper weight to its conclusion that separating siblings would be too detrimental to include the father in placement considerations. Reversed.

**Keplin v. Keplin, No. 03-5014-1 (Turtle Mountain Band Appellate Court 2005), available at <http://www.turtle-mountain.cc.nd.us/cases.htm>**

An appeal stemming from a petition for divorce and custody of four minor children. The appellate court held that, although notice of appeal was served outside the time required under tribal law, the appeal should still be granted, as there was no indication of significant adverse impact to the appellee's rights. The court then applied a clear error/abuse of discretion standard as to findings regarding 1) custody of the children; 2) award of child support; 3) use of marital home/maintenance; 4) whether the trial court judge should have recused herself. The appellate court held that no abuse of discretion occurred respecting any of the above issues. Affirmed.

**In the Matter of L.C.M., 32 Indian L. Rep. 6032 (Pawnee Nation of Oklahoma Supreme Court 2005)**

An appeal affirming the trial court's termination of parental rights. The court held that the Nation provided reasonable services to reunite the appellant mother and her child; that the mother had notice that the termination of her parental rights would be forthcoming should she fail to follow the prescribed treatment plan; that the mother failed to make procedural objections in the lower court, thus waiving her right to challenge them on appeal absent a showing of prejudice; and that the mother's assertion that the Nation failed to meet statutory requirements for the termination of parental rights raised for the first time on appeal lacks merit given that the mother withdrew her contest against the petition and request for an adjudicatory hearing. Affirmed.

**Stone v. Bradley, 2005.NACE.0000005 (Eastern Band of Cherokee Indians Tribal Court 2005)**

(from the opinion) The trial court concluded: "The court concludes as a matter of law that the Order of the 12th of July, 2001 meant that the defendant father could pick up the children where the children were, which on the 26th of December, 2002, was in Cherokee, North Carolina at the maternal grandparents' residence and all the defendant had to do was pick up the children there; that the defendant father attempted to pick up the children on December the 26th but the plaintiff had already decided that she was going to Florida and that she would force the defendant father to go to Florida to pick up the children for his visitation. Such would cause travel all day on the 26th and the 27th." Based on these findings, the trial court determined that appellant's actions constituted civil and criminal contempt of the August 13, 2001 order. \*\*\* The trial court's finding of criminal contempt is soundly supported by the evidence and record of this case. The judgment of the court is proper in every respect and is affirmed. This case is remanded to the Cherokee Court for compliance with the order of that Court dated April 1, 2003.

**Watson v. Watson, 2005.NANN.0000003 (Navajo Nation Supreme Court 2005)**

(from the opinion) The issues in the case are: 1. Whether the trial court abused its discretion by denying interest on child support and spousal support arrearages; 2. Whether the trial court abused its discretion by crediting half the value of a Joint Use Area (JUA) house previously awarded against spousal support; 3. Whether the trial court abused its discretion in denying a request to order Appellee to take out a life insurance policy as security for payment of the arrearages; and, 4. Whether the trial court abused its discretion by reducing prospective spousal support from \$800 a month to \$200 a month. \*\*\* Based on the above, we vacate the Tuba City Family Court's Decree in part. Specifically, we vacate the portions of the Decree that denied interest on the child support and spousal support arrearages and the portion that credited half the value of the JUA home to the spousal support arrearages, we order the Tuba City Family Court to require Eddie Paul Watson to pay interest and to reinstate the full spousal support arrearages. We remand the portions of the Decree concerning life insurance and the reduction of

prospective spousal support to provide reasons, and, if necessary, findings of fact supporting those reasons.

**Wilkie v. Solberg, No. 04-002 (Turtle Mountain Band Appellate Court 2005), available at <http://www.turtle-mountain.cc.nd.us/cases.htm>**

An appeal concerning custody and visitation issues. The appellate court conducted a clearly erroneous/abuse of discretion review, holding that there was sufficient evidence presented below to sustain the trial court's decision. Affirmed.

## **XII. Housing**

**Hendrickx v. Gardner, 32 Indian L. Rep. 6077 (Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation Court of Appeals 2005)**

An appeal reversing the trial court's determination regarding a landlord's claims against his tenant. The appellate court reversed due to a lack of factual inquiry by the trial court concerning aspects of the tenant's departure from the premises, and it also held that the landlord should be bound to the terms of his lease, even if such a decision works to the landlord's detriment. Reversed.

**Monette v. Schlenvogt, 32 Indian L. Rep. 6074, 2005.NATM.0000003 (Turtle Mountain Band Appellate Court 2005)**

An appeal vacating a trial court order granting forcible eviction and back rent. The appellate court held that the appellant's due process rights under ICRA were violated when she was not given notice of a show cause hearing and arraignment. Further, the appellate court cautioned lower courts regarding the use of criminal contempt hearings to enforce civil judgments. Vacated and remanded.

**Oneida Tribe of Indians of Wisconsin Dept. of Land Management v. Nohr, 2005.NAOW.0000002 (Oneida Appeals Commission Tribal Court 2005)**

(from the opinion) On July 10, 2003 Division of Land Management's Property Manager, Residential Leasing Specialist and maintenance staff inspected 2026 Packerland Drive and found excessive waste and damage had been done to the rental unit by Respondents Pamela Nohr and James E. Neitzel. \*\*\* As a result of this hearing Petitioner and Mr. Neitzel agreed to enter into settlement negotiations. A settlement was reached in the sum of \$4,968.00, repayment to begin March 4, 2005. Respondent Neitzel agreed to pay the sum of \$95.54 per week for 52 weeks, for a total \$4,968.00 beginning March 4, 2005 and ending February 24, 2006. The remainder of the money judgment requested by Division of Land management, is now the sum of \$5,240.20. Default judgment in the amount of \$5,240.20 will be issued against Ms. Pamela Nohr to be paid to Division of Land Management.

**Phillips v. Navajo Housing Authority, 2005.NANN.0000016 (Navajo Nation Supreme Court 2005)**

(from the opinion) An owner of a mutual help home sued the Navajo Housing Authority for damages arising from NHA's alleged failure to complete renovations to her home. The Shiprock District Court dismissed the case, apparently ruling that NHA had sovereign immunity based on a Navajo Nation Council resolution passed after the filing of the suit. The Court vacates the district court's decision and remands for further proceedings. \*\*\* The real question in this case is whether the Resolution does apply retroactively. \*\*\* The Resolution lacks the necessary clarity, and therefore cannot have retroactive effect.

### **XIII. Membership**

**Douglas v. Confederated Tribes of Grand Ronde, 32 Indian L. Rep. 6053 (Confederated Tribes of the Grand Ronde Community of Oregon Court of Appeals 2005)**

A tribal court opinion affirming the tribes' enrollment committee's decision denying the petitioners application for enrollment. The court found no violation of due process by the enrollment committee, and that its decision was neither arbitrary nor capricious.

**Gleason v. Confederated Tribes of Grand Ronde, 32 Indian L. Rep. 6054 (Confederated Tribes of the Grand Ronde Community of Oregon Tribal Court 2005)**

A tribal court opinion ordering reconsideration of the tribes' enrollment committee's decision to deny enrollment to the petitioner's two children. The court decided to remand the committee's decision, because the petitioner may have been subject to a one-year waiting period (after relinquishing enrollment in another tribe) from earlier law that was found impermissible. The court remanded for a factual determination.

**Gomes v. Confederated Tribes of Grand Ronde, 32 Indian L. Rep. 6056 (Confederated Tribes of the Grand Ronde Community of Oregon Tribal Court 2005)**

A tribal court opinion similar to the one described above, remanding the enrollment committee's decision for a factual determination as to whether the now-impermissible one-year relinquishment standard was applied to the petitioner's enrollment application.

**Norwest v. Confederated Tribes of Grand Ronde, 32 Indian L. Rep. 6057 (Confederated Tribes of the Grand Ronde Community of Oregon Tribal Court 2005)**

A tribal court opinion similar to the one above, remanding the enrollment committee's decision for a factual determination as to whether the petitioner submitted her birth

certificate before the deadline and whether the impermissible one-year relinquishment standard was applied.

**Snowden v. Saginaw Chippewa Indian Tribe of Michigan, 32 Indian L. Rep. 6047 (Saginaw Chippewa Indian Tribe of Michigan Court of Appeals 2005)**

An appeal to determine whether the tribal council's power to disenroll members is limited to the narrow grounds expressly identified in the tribal constitution, and if not, to define the constitutional boundaries for establishing grounds for disenrollment. The appellate court determined that the only express constitutional authority to disenroll members was limited to situations involving adopted tribal members and tribal members who abandon their membership through enrollment with another tribe. The court further held that the tribe's implied power to disenroll is constitutionally limited to occasions of fraud or mistake. Reversed.

**Tonasket v. Colville Confederated Tribes Enrollment, 32 Indian L. Rep. 6144, 32 Indian L. Rep. 6145 (Colville Confederated Tribes Tribal Court 2005)**

Two tribal court opinions regarding tribal membership established by blood quantum. The first opinion denied the plaintiff's motion for reconsideration of a determination that a party was not full-blooded. The court disregarded the plaintiff's legal argument, as it was simply arrived at through a case heading. Further, the court held that there was a preponderance of evidence supporting the blood quantum conclusion, and that the court did not err in attaching weight to certain pieces of evidence considering the totality of the circumstances.

The second opinion denies the plaintiff's petition to grant a blood quantum correction, holding that the U.S. Secretary of the Interior failed to provide this correction within the time allotted by the tribal constitution.

#### **XIV. Professional Responsibility**

**In re Unger, 32 Indian L. Rep. 6106, 2005.NAMP.0000011 (Mashantucket Pequot Tribal Court 2005)**

A tribal court opinion disbaring the respondent, imposing fines, and declaring his bar membership payments forfeited, for falsely stating that he had been admitted to practice law in the state of Massachusetts.

#### **XV. Tribal Customs, Tradition, and Culture**

**Cook v. Cook, 32 Indian L. Rep. 6138 (Cheyenne River Sioux Tribal Court of Appeals 2005)**

An appeal affirming the trial court's opinion that: 1) the courts of the Cheyenne River Sioux Tribe have the legal authority to change the English surname of tribal members upon proper petition, but the courts do not have the authority to confer Lakota names,

which are reserved to Lakota tradition, custom, and ceremony; and 2) there is no conflict as a matter of tribal law and tradition in granting a change of the tribal member's English surname and the conferring of a Lakota name at an appropriate ceremony. Affirmed.

## **XVI. Torts**

### **Allstate Indemnity Co. v. Blackgoat, 2005.NANN.0000002 (Navajo Nation Supreme Court 2005)**

(from the opinion) The relevant facts are as follows. Appellants Suzie and Larrison Blackgoat (Blackgoats) are the guardians of the minor children of Carl Holly and Valerie Little Holly (Holly children). Carl and Valerie died in a car accident on the Navajo Reservation near Red Mesa, Arizona. Appellee Allstate (Allstate) is the insurance company for the driver of the other vehicle. Through their attorney, the Blackgoats sent Allstate a letter several months after the accident to make a claim on the insured's policy on behalf of the Holly children. Allstate responded and indicated that the Blackgoats had to settle with other claimants to the policy, including a passenger in the vehicle that hit the Holly's parents. Once the Blackgoats settled with the other claimants, Allstate would then distribute the funds. Several more communications followed without settlement of the claim. Three and a half years after the accident, Allstate filed an interpleader in the Kayenta District Court under Rule 22 of the Navajo Rules of Civil Procedure. The Blackgoats and other claimants reached a settlement on the distribution of the policy proceeds. However, the Blackgoats filed a counterclaim against Allstate and requested that the court award pre-judgment interest. During consideration of the counterclaim, Allstate deposited the policy proceeds with the court. The Blackgoats filed a motion for summary judgment on the pre-judgment interest issue, and Allstate filed a motion to dismiss the pre-judgment interest demand. After oral argument, the court denied the pre-judgment interest request, ruling, among other things, that Allstate had fulfilled its responsibilities under the Navajo Common Law concept of nályééh. \*\*\* This case concerns whether pre-judgment interest should be awarded. Based on our review, we reverse the Kayenta District Court, and award pre judgment interest.

### **Barbosa v. Mashantucket Pequot Gaming Enterprise, 2005.NAMP.0000005 (Mashantucket Pequot Tribal Court 2005)**

(from the opinion) This action arises out of events occurring when coalition forces led by the United States were hunting for Saddam Hussein, the deposed leader of Iraq, who was still at large and had not yet been tracked down and captured. The plaintiff, who has a mustache, bears a remarkable resemblance to Saddam Hussein. On the evening of March 22, 2003 the plaintiff, together with his wife and members of her family, visited the Foxwoods Casino operated by the Mashantucket Pequot Gaming Enterprise. He was wearing a beret similar to the beret worn by Saddam Hussein in numerous newspaper photographs. While walking on a concourse towards one of the gaming rooms, he was accosted by the defendants Michael McLane and Emanuel Papadakis. They approached the plaintiff, swore and pointed their fingers at him, and said "we're kicking your ass

over there and we'll do it here." They smelled of alcohol and their speech was slurred. The plaintiff was taken off guard; he did not respond. Instead, he walked away with his family towards casino no. 6, entered it, and sat at a row of slot machines. Ten or fifteen minutes later, McLane came up behind the plaintiff, who was seated at a slot machine, swore at him, said "I didn't get you then but I'll get you now," and snatched the beret off the plaintiff's head. When the plaintiff arose, Papadakis restrained him. McLane then punched the plaintiff in the face. The plaintiff fell to the floor of the aisle adjoining the row of slot machines. McLane and Papadakis then kicked and stomped the plaintiff's back, head and face, one on each side of him, while he was lying prone on the floor. \*\*\* Fortunately for all concerned, the plaintiff's physical injuries were not permanent. He recovered, went back to work within a week after the beating, and regained his full vision within a month of the assault. The court must assess damages for the plaintiff's lost wages, medical expenses, a month of pain and suffering and a lifetime of memories of being viciously beaten in the presence of his wife and members of her family. Taking into account the testimony and demeanor of the parties and their witnesses, the documentary evidence, the applicable law and the arguments of counsel, the court will award damages on Counts II and III in favor of the plaintiff against McLane and Papadakis in the amount of \$33,070.00, allocated as follows: \$3,070.00 economic damages and \$30,000.00 non-economic damages. Said damages are to be joint and several obligations of McLane and Papadakis.

**Batchelder v. Mashantucket Pequot Gaming Enterprise, 2005.NAMP.0000002 (Mashantucket Pequot Tribal Court 2005)**

(from the opinion) Plaintiff Simin Batchelder brings this premises liability action against the defendant, the Mashantucket Pequot Gaming Enterprise, for personal injuries she sustained while attempting to enter Foxwoods Resort Casino through the handicapped access door. In her complaint, the plaintiff alleges that she sustained the injuries and losses described below when her right hand became trapped between the handicapped accessibility door handle and the adjacent concrete wall when the door's automatic activation device was set in motion at the same time the plaintiff was attempting to open the door manually. \*\*\* As a result of the injury to the plaintiff's right hand and left thumb, the court finds that she has incurred medical expenses in the amount of \$3,549.02. In addition, the court enters an award for pain and suffering in the amount of \$3,000.00. The total judgment in favor of the Plaintiff is \$6,549.02. By way of special defense, the defendant invokes the doctrine of comparative negligence. In the instant case, the handicapped door, like any other door, might become dangerous if carelessly or improperly used (i.e., opening the door with excessive force). In this case, the plaintiff admitted that she pulled the door "as hard as she could." Therefore, the court finds the plaintiff to be 10 percent comparatively negligent under the circumstances described herein, thereby reducing the judgment by \$654.90 to \$5,894.12.

**Cantaselos v. Mashantucket Pequot Gaming Enterprise, 2005.NAMP.0000010, 32 Indian L. Rep. 6124 (Mashantucket Pequot Court of Appeals 2005)**

An appeal following a tribal court decision in a negligence action against the tribal gaming enterprise. The appellate court held that it was not clearly erroneous for the trial court not to accept the plaintiff's asserted inferences that 1) her fall was caused by a foreign substance on the floor, and that 2) the gaming enterprise caused the substance to be there. Affirmed.

**Crows Breast v. Fort Berthold Housing authority, 32 Indian L. Rep. 6066 (Northern Plains Intertribal Court of Appeals 2005)**

An appeal reversing the tribal court's decision to enter a default judgment. The appellate court held that the defendants' motion to dismiss must be considered an appearance, precluding an entry of judgment in default. Reversed.

**Jacobson v. Mashantucket Pequot Gaming Enterprise, 2005.NAMP.0000001 (Mashantucket Pequot Tribal Court 2005)**

(from the opinion) The court issued a memorandum of decision in this case on October 18, 2004. In that decision the court ordered the parties to file additional briefs addressing a conflict of laws issue, specifically, whether the statute of limitations of Connecticut law or the statute of limitations of Mashantucket law should apply to an accident that occurred outside the geographical jurisdiction of the Mashantucket Pequot Tribe. \*\*\* The court adopts the general rule that a statute of limitations relates to the remedy as distinguished from the right. Remedies and modes of procedure depend on the law of the forum and not the law where the claim accrued. Therefore, the forum court should apply its own law to determine the timeliness of the plaintiff's action. As such, the one-year statute of limitations as stated in IV M.P.T.L. ch 1, §5 is applicable. There is no factual dispute as to when the action accrued (January 23, 2002) and the filing of this action in this court (September 18, 2003). Therefore, summary judgment may enter in favor of the defendant Gaming Enterprise.

**Kalantari v. Spirit Mountain Gaming, Inc., 2005.NAGR.0000002 (Confederated Tribes of the Grand Ronde Community of Oregon Court of Appeals 2005)**

(from the opinion) Defendant appeals from an interlocutory order determining that the limitation on non-economic damages contained in Tribal Code Section 255.6(h) is inapplicable to this personal injury case. We determine that the order in question is not a "final order" subject to appellate review under Tribal Code Section 310(h)(2) and dismiss the appeal for lack of subject-matter jurisdiction.

**Lee v. Little Lodge Head Start, No. 02C-0366 (Three Affiliated Tribes of the Fort Berthold Reservation District Court 2004)**

Granting summary judgment in a tort claim to Little Lodge Head Start, an arm of the tribal government that enjoys the tribe's immunity from suit; denying summary judgment to St. Paul Fire and Marine Insurance on the basis that federal law (25 U.S.C. § 450f(c))

prohibits insurers from raising tribal sovereignty immunity as a defense where the tribal insured was operating using federal self-determination act funds.

**Linksy v. Mashantucket Pequot Gaming Enterprise, 32 Indian L. Rep. 6039 (Mashantucket Pequot Tribal Court 2005)**

A tribal court opinion finding that a sloped metal separator between a wooden dance floor and a carpeted area did not constitute a dangerous condition as defined in tribal law, and thus concludes that the plaintiff did not prove by a preponderance of the evidence that she fell as a result of a dangerous condition on the defendant's premises.

**Estate of Mariani v. Mashantucket Pequot Gaming Enterprise, 32 Indian L. Rep. 6040, 2005.NAMP.0000004 (Mashantucket Pequot Tribal Court 2005)**

A tribal court opinion in a personal injury action, holding that the defendant is liable for the full amount of medical expenses incurred by the plaintiff notwithstanding the amount paid by Medicare, along with an additional amount for pain and suffering.

**Rogers v. Mashantucket Pequot Gaming Enterprise, 32 Indian L. Rep. 6042, 2005.NAMP.0000003 (Mashantucket Pequot Tribal Court 2005)**

A tribal court opinion sustaining its prior rulings following a motion for reconsideration. The court held that tortfeasors must pay for an injured plaintiffs damages regardless of whether the plaintiffs are insured, and that any windfall resulting from such will be offset by the statutory cap placed upon such awards. The court declined to impose a collateral source rule, deferring to the legislature. Finally, the court again declines to sanction the plaintiff for discovery violations.

**Rogers v. Mashantucket Pequot Gaming Enterprise, 32 Indian L. Rep. 6018 (Mashantucket Pequot Tribal Court 2005)**

A tribal court opinion determining that an employee's negligence was the proximate cause of the plaintiff's injuries and awarding damages. The fact that the only warning that plaintiff had that the slot machine next to him was being serviced occurred when the door of that machine hit his hand was sufficient evidence of negligence and causation. The court refused to reduce the damage award based on evidence that the plaintiff may have re-injured his hand breaking up a fight in commission of his duties with the Boston Public Schools.

**Setian v. Mashantucket Pequot Gaming Enterprise, 32 Indian L. Rep. 6027 (Mashantucket Pequot Tribal Court 2005)**

A tribal court opinion entering judgment for the plaintiff and awarding damages. The freshly-mopped floor slipped upon by the plaintiff constituted a dangerous condition under the law, and that the gaming enterprise employee was negligent in mopping the

floor without posting a sign for passersby. The court follows with a discussion of medical bills that it found related to the plaintiff's fall.

**Schiff v. Mohegan Tribal Gaming Authority, 2005.NAMG.0000005 (Mohegan Tribe Gaming Disputes Trial Court 2005)**

(from the opinion) Plaintiff was a patron at the Season's Buffet on New Year's Eve 2002. She slipped and fell on a red substance on her way back to her table from the buffet line. She injured her back and shoulder as a result of her fall and sued the MTGA claiming negligence. The Court entered judgment for the Defendant since the evidence only showed that the substance might have been on the floor for five minutes and that as a matter of law this was an insufficient time to find that the Defendant had constructive notice of the condition.

**Senatore v. Mashantucket Pequot Gaming Enterprise, 2005.NAMP.0000019 (Mashantucket Pequot Tribal Court 2005)**

(from the opinion) In a claim for personal injuries allegedly resulting from the plaintiff's impact with a misaligned coat hook in a bathroom stall, the court finds that the plaintiff did not establish by a fair preponderance of credible evidence that the injury resulted from a breach of the defendant's duty to properly align or secure the coat hook. The plaintiff did not demonstrate that the defendant was on notice that the coat hook was misaligned or loose; he did not demonstrate that the coat hook, if misaligned or loose, gave rise to a hazardous condition that was the proximate cause of plaintiff's injuries. The court entered judgment for the defendant.

**Sullivan v. Mashantucket Pequot Gaming Enterprise, 2005.NAMP.0000008, 32 Indian L. Rep. 6128 (Mashantucket Pequot Tribal Court 2005)**

A tribal court opinion entering judgment for the plaintiff and awarding actual damages and damages for pain and suffering. The plaintiff fell once and was helped to his feet again by gaming staff. The plaintiff fell again after being helped almost to a standing position. The court upheld the plaintiff's failure to train and negligent assistance claims, finding that the gaming staff acted negligently in lifting the plaintiff, a very large man. The court limited the plaintiff's actual damages to his "loss," therefore deducting Medicare payments for the medical bills (in odd contrast to Rogers, above). The court held that pain and suffering damages should only be reduced if totaling more than the amount of actual damages.

**Yip v. Mashantucket Pequot Gaming Enterprise, 2005.NAMP.000013, 32 Indian L. Rep. 6161 (Mashantucket Pequot Tribal Court 2005)**

A tribal court opinion entering judgment for the plaintiff and awarding damages. The parties stipulated to liability, agreeing that the plaintiff was negligently struck in the back by a coin cart. The court also found that the plaintiff could not prove what portion of her

asserted medical bills resulted from treatment of a pre-existing back condition, reducing damages accordingly.