

ALASKA ATTORNEYS
LOYD BENTON MILLER
RICHARD D. MONKMAN
REBECCA A. PATTERSON
KENDRI M. M. CESAR
WHITNEY A. LEONARD
CHARLES J. KIDD
K. AMANDA SAUNDERS

LAW OFFICES
**SONOSKY, CHAMBERS, SACHSE,
MILLER & MONKMAN, LLP**
725 EAST FIREWEED LANE, SUITE 420
ANCHORAGE, ALASKA 99503
(907) 258-6377
FAX (907) 272-8332
WEBSITE: WWW.SONOSKY.COM

JUNEAU OFFICE
302 GOLD STREET, SUITE 201
JUNEAU, ALASKA 99801
(907) 586-5880-FAX (907) 586-5883

OF COUNSEL
MYRA M. MUNSON
ROGER W. DUBROCK
KAY E. MAASSEN GOUWENS

Tribal Sovereign Immunity – Recent Developments in the Law

“Tribal sovereign immunity” is a federal law doctrine that means a tribe, like federal and state governments, cannot be sued without its consent, and that a judgment cannot be entered against a tribe or its officers when acting in their official roles. A key purpose of this doctrine is to protect tribal government resources, which are best spent on providing services to tribal citizens as the tribe sees fit—free from the threat of litigation and judgment. Recent Alaska court cases have set strong precedent favorable to tribes, applying the doctrine to block lawsuits against tribes, tribal organizations, and tribal officers and employees.

In *Douglas Indian Association v. Central Council of Tlingit & Haida Indian Tribes of Alaska*, the Alaska Supreme Court held that tribes cannot be sued without their consent because “federally recognized tribes in Alaska are sovereign entities entitled to tribal sovereign immunity in Alaska state court.” Importantly, the court held that when sovereign immunity applies, it blocks a lawsuit *at the outset* of the case, saving the Tribe from the burdens of going through litigation, not just from the burden of paying a money judgment at the end of the case. In *Oertwich v. Traditional Village of Togiak*, the United States District Court in Alaska reached the same result, holding that tribal sovereign immunity blocked a man’s suit against the tribe and the tribe’s judges, officers, and other employees in a banishment case.

Four other federal cases in the past year applied sovereign immunity to protect Alaska Tribal Health System nonprofit corporations that operate as an “arm” of their constituent tribes: *Wilson v. ANTHC*; *Matyascik v. ASNA*; *Barron v. ANTHC*; and *Cole v. SEARHC*. In all these cases, the courts held that Alaska tribal health organizations have sovereign immunity. This is a positive development for Alaska tribal health organizations, and it is a departure from older precedent in the Alaska state courts, which had used a much more limited test for determining whether tribal organizations share their constituent tribes’ sovereign immunity.

It is important to note that tribal sovereign immunity can be waived. This can be done intentionally by a tribe for business reasons or as a policy choice. But this important protection can also be waived inadvertently. For example, immunity can be waived if a tribe does not assert immunity at the proper time in litigation, or if the tribe enters into a contract or grant agreement that contains a waiver or an arbitration agreement. There are many pitfalls in this area. A tribe that wishes to protect its sovereign immunity should consult its attorneys about the steps it can take to maintain this important right.

For more information, contact Richard Monkman (rdm@sonosky.net) or Whitney Leonard (whitney@sonosky.net) at Sonosky Chambers.

Important Decisions Relating to Tribal Sovereign Immunity and Tribal Organizations

Alaska Native Tribal Health Consortium v. Premera Blue Cross, 2015 WL 12159388 (D. Alaska July 2, 2015)

Allen v. Gold Country Casino, 464 F.3d 1044, 1047 (9th Cir. 2006)

Barnes v. Bristol Bay Area Health Corp., No. A92-459 CIV (D. Alaska Apr. 20, 1993)

Barron v. Alaska Native Tribal Health Consortium, 373 F. Supp. 3d 1232, 1237 (D. Alaska 2019)

Bekkum v. Samuel Simmonds Memorial Hospital, 2BA-15-97 CI (Alaska Superior Ct. June 19, 2015)

Beversdorf v. Tanana Chiefs Conference, Inc., No. 4FA-17-01911CI (Alaska Superior Ct. Sept. 27, 2017)

Bodi v. Shingle Springs Band, 832 F.3d 1011 (9th Cir. 2016)

Cole v. Southeast Alaska Regional Health Consortium, Case No. 1:18-cv-00011-TMB (D. Alaska 2019)

Douglas Indian Association v. Central Council of Tlingit & Haida Indian Tribes of Alaska, 403 P.3d 1172 (Alaska 2017)

John v. Baker, 982 P.2d 738 (Alaska 2009)

Healy Lake Band v. Mt. McKinley Nat'l Bank, 322 P.3d 866 (Alaska 2014)

Matyascik v. ASNA, No. 2:19-CV-0002-HRH (D. Alaska Aug. 5, 2019)

Montella v. Chugachmiut, 283 F. Supp. 3d 774, 778–79 (D. Alaska 2017)

Oertwich v. Traditional Village of Togiak, No. 3:19-cv-00082 (JWS) (D. Alaska Sept. 12, 2019)

White v. Univ. of California, 765 F.3d 1010, 1018 (9th Cir. 2014)

Wilson v. Alaska Native Tribal Health Consortium, 2019 WL 2870080 (D. Alaska 2019)