

Washington State Supreme Court Upholds Sovereign Immunity for Tribal Enterprises

Two tribal economic enterprises and a tribal employee have obtained a favorable result from the Washington Supreme Court that should help tribal employers by limiting employee related discrimination claims filed against them in state courts. Christopher Wright filed suit in state court against the Colville Tribal Enterprise Corporation (CTEC), its subsidiary Colville Tribal Services Corporation (CTSC), and Donald Braman, a CTSC supervisor. CTEC is the parent corporation that was chartered by the Colville Tribes in 1984 and operates fourteen different business enterprises on the Tribes' behalf. CTSC is a construction company and wholly owned subsidiary of CTEC that was chartered by the Tribes in 1988.

Mr. Wright, who is Caucasian, worked as a pipelayer for CTSC in Oak Harbor, Washington on a United States Navy housing project. Mr. Wright's complaint alleged racial harassment and discrimination under the Washington Law Against Discrimination and common law claims.

The Confederated Tribes of the Colville Reservation (Tribes) is a federally recognized Native American Tribe. The Tribes' reservation is located in north-central Washington State. The Tribes incorporated CTEC and CTSC to assist in developing the Tribes' natural and human resources to further its goal of self-sufficiency and self-government. Accordingly, the Tribes incorporated CTEC and CTSC under tribal law as governmental corporations, ensuring that control of the corporations would remain with the Tribes and that CTEC and CTSC's revenue would benefit the Tribes as a whole.

CTEC and CTSC, along with Mr. Braman, filed a motion to dismiss the case in superior court, arguing that the court lacked jurisdiction and was also barred by the doctrine of tribal sovereign immunity. That doctrine bars most lawsuits against Native American tribes and arms of the tribes. In this case, CTEC and CTSC are governmental corporations that are deemed to be arms of the Tribes and carrying out essential governmental purposes for the general welfare and prosperity of all tribal members. In fact, the Colville Tribes relies on revenues from CTEC and CTSC to provide governmental services on the reservation.

Mr. Wright appealed the dismissal, and the Washington Court of Appeals reversed, holding that CTEC, CTSC, and Braman were not immune from suit in state court. The appellate court based its conclusion largely on a decision from the Alaska Supreme Court and applied a series of factors that other courts have applied in analyzing whether a tribal economic entity is immune from suit.

The Washington Supreme Court granted review. In a landmark decision, the Supreme Court reversed the appellate court. The Washington Supreme Court held that all the defendants were immune from suit in state court even though CTEC and CTSC were involved in commercial activities outside the reservation. The court recognized that both federal and state law supported a finding of immunity and that, even if the factors relied

on by the court of appeals were relevant, application of those factors to CTEC, CTSC, and Braman favored immunity. The concurring opinion noted that the majority's result did not leave employees such as Mr. Wright without a remedy because he could have filed a grievance, sought relief through the Tribal Employment Rights office, or pursued damages under a policy of insurance. In fact, the Confederated Tribes of the Colville Reservation has a sophisticated legal system that has been hearing and resolving cases for many years.

This case represents a significant victory for the Tribes in particular and the greater Native American community in Washington in general. The decision should foster continued economic development and self-determination by the Confederated Tribes of the Colville Reservation and other Washington tribes while protecting them and their business enterprises from employment discrimination and related state court litigation.