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Fredericks Peebles & Patterson LLP Successful with Housing- and School-Related Issues for Native American Tribes in 2019

Dec. 17, 2019 — This was a significant year for Fredericks Peebles & Patterson LLP, the majority native-owned law firm that specializes in representing Native American tribes and native-owned entities throughout the country. In recent months, the firm successfully tackled two housing- and school-related issues that have important ramifications for tribes.

In *Lummi Tribe of the Lummi Reservation et al. v. United States*, the U.S. Court of Appeals for the Federal Circuit restored several claims in a suit by tribal housing agencies, which sought more federal funding under the Native American Housing Assistance and Self-Determination Act. According to the agencies, the U.S. Court of Federal Claims dismissed their entire suit rather than simply dismissing two claims from a prior appeal.

FPP represented the Lummi Tribe and its housing authority, the Hopi Tribal Housing Authority, and the Fort Berthold Housing Authority in the case, which asked the Federal Circuit to reinstate the housing authorities' claims for breach of contract, breach of fiduciary duty, and breach of trust against the federal government. The housing authorities asserted that the appealed court of claims decision was based upon the claims court's misreading of the appellate order in a prior appeal in the case.

The origin of this case dates to 2008, when the three agencies and the Fort Peck Housing Authority claimed the U.S. Department of Housing and Urban Development had wrongly reduced the money the housing authorities received under NAHASDA, which the government provides to federally recognized tribes through grants. The agencies argued that, based upon contract, trust responsibilities and other legal theories, the federal courts were required to restore that much-needed funding to the housing authorities.

“In the original complaint, the agencies included the three claims for breach and argued that HUD failed to provide them with a hearing before withholding funding,” said FPP attorney Jeffrey Rasmussen.

In its Oct. 9 opinion, a Federal Circuit panel agreed that the lower court should have preserved the three breach claims, with U.S. Circuit Judge Jimmie V. Reyna noting, “Lummi didn't have a prior opportunity to present its arguments on the remaining claims, and we will not close the courthouse doors on unadjudicated issues.”

“Our arguments required the court to understand the long and complex procedural history in this case,” Rasmussen observed. “We appreciate that the appellate court spent the time and effort to understand that history, which led to this correct result.”

Also this year, in *Stathis v. Marty Indian School*, the South Dakota Supreme Court ruled in favor of the Marty Indian School, a tribally controlled school on the Yankton Sioux Indian Reservation. Mr. Stathis, a former employee, filed the suit against the school, three school employees, and four members of the school board, alleging breach of a settlement agreement, wrongful termination, libel, and slander.

“The South Dakota Supreme Court affirmed the District Court’s dismissal of the action for lack of subject matter jurisdiction,” explained FPP attorney and managing partner Rebecca Kidder, who briefed and argued the case. “The Supreme Court held that federal law preempts claims brought in state court against the tribal school and its employees and officials.”

Chief Justice David Gilbertson wrote the opinion for the court, in which there was no dissent. He explained that, “Together, the Self-Determination Act and the Tribally Controlled Schools Act show a clear intent of Congress to preempt state court entanglement into the education of Indians living on the reservation.

“The ability of MIS and the tribe to resolve disputes regarding employment contracts is inherently part of maintaining an educational process,” Gilbertson continued. “State court action in this dispute is preempted by federal law, and therefore, the circuit court did not err in dismissing Stathis’s complaint on that basis.”

The South Dakota Supreme Court also recognized that Article XXII of the South Dakota Constitution disclaims “all right and title” to Indian lands within the state. In addition, it acknowledges that “Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States.”

“This decision is a significant victory for tribes, tribal schools and tribal entities, as well as for any employees or officials who might face lawsuits in state courts,” Kidder explained. “The South Dakota Supreme Court upheld the principle that suits against tribes, tribal entities, and tribal employees and officials are barred by federal preemption under federal education laws and under the South Dakota Constitution.

“Even if sovereign immunity itself is not a bar to bringing suit in a state court,” she added, “federal preemption is an alternative ground for state courts to find the lawsuits may not be brought in state court for conduct and activity occurring within Indian Country.”

One of the country’s only majority native-owned law firms, Fredericks Peebles & Patterson has offices in Sacramento, California; Louisville, Colorado; Rapid City, South Dakota; and Washington, DC. To learn more, visit www.ndnlaw.com.

Fredericks Peebles & Patterson LLP is dedicated to the representation of American Indian tribes and Native American organizations throughout the United States. Legal services include a

wide spectrum of services related to Indian concerns in the areas of business transactions, litigation and governmental affairs.

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