

No. _____

In The

SUPREME COURT OF THE UNITED STATES

JOSEPH CHAYOON

Petitioner

v.

WILLIAM SHERLOCK, JAMES A. RIGOT, RICH TESLER, LINDA SMITH,
MIKE RICH, JOANN FRANK, FAY E. CARLSON, DOTTIE KILLY

Respondents

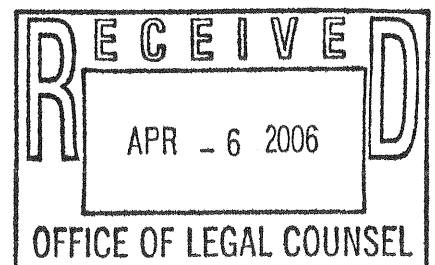
ON PETITION FOR WRIT OF CERTIORARI
TO THE APPELLATE COURT OF THE STATE OF CONNECTICUT

PETITION FOR WRIT OF CERTIORARI

Joseph Chayoon
Petitioner, Pro Se

P.O. Box 1535
Westerly, RI. 02891

Phone: (401)322-9131



QUESTIONS PRESENTED

1. DO FEDERAL LABOR LAWS IN GENERAL AND THE FAMILY MEDICAL LEAVE ACT IN PARTICULAR APPLY TO NON-INDIAN EMPLOYEES OF AN INTERSTATE COMMERCE INDIAN CASINO IN CASES THAT ARE NOT OF AN INTRAMURAL SELF-GOVERNMENTAL ISSUE OF THE TRIBE?

2. CAN A NON-INDIAN EMPLOYEE OF AN INTERSTATE COMMERCE INDIAN CASINO WHO VIOLATED A FEDERAL LABOR LAW FOR PERSONAL REASONS AND OUT OF PERSONAL VENDETTA, ESCAPE THE LAW OF THE LAND BY CLAIMING TRIBAL SOVEREIGN IMMUNITY FROM SUIT EVEN IF HIS ACTIONS WERE AGAINST TRIBAL REGULATIONS AND BEYOND THE SCOPE OF HIS AUTHORITY?

3. DOES AN OBLIGATION AND ATTACHMENT OF AN INDIAN CASINO ON THEIR OWN DRAFTED DOCUMENTS TO THE FAMILY AND MEDICAL LEAVE ACT (1993) (including exact citing of Sections from this Act) CONSTITUTE A WAIVER OF SOVEREIGN IMMUNITY IN RELATION TO THIS ACT?

LIST OF PARTIES

ALL PARTIES APPEAR IN THE CAPTION OF THE CASE ON
THE COVER PAGE.

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FN=Footnote

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

- reported at 877 A. 2d. 4 Docket No. 25450 CT. Appellate Court.; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the CT. Superior Court No. 128101 District of New London court appears at Appendix B to the petition and is

- reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was JUNE 28, 2005
A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date: NOVEMBER 03, 2005, and a copy of the order denying rehearing appears at Appendix C.

An extension of time to file the petition for a writ of certiorari was granted to and including APRIL 3, 2006 (date) on Dec, 28, 2005 (date) in Application No. 05 A 572.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

U.S. Constitution, Fifth Amendment: "No person shall be.... Nor be deprived of life, liberty, or property without due process of the law....."

U.S. Constitution, Fourteenth Amendment: "...Nor shall any State Deprive any person of life, liberty, or property, without do process of the law; Nor deny to any person within its jurisdiction the equal protection of the law."

The Family and Medical Leave Act, 1993

Section 101(4)(A): "In general the term employer means any person engaged in commerce...who employs 50 or more employees...includes any person who acts directly or indirectly, in the interest of an employer to any of the employees of the employer; and any successor in interest of an employer and includes any "public agency" as defined in section 3(x) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(x))."

Section 102(a)(1)(C): "...An Eligible Employee shall be entitled to a total of 12 workweeks of leave during any 12 moth period....in order to care for the spouse, or a son, daughter, or parent of the employee if such spouse, son, daughter, or parent has a serious health condition."

Section 104(a)(1)(A): "Any eligible employee who takes leave under section 102... shall be entitled, on return from such leave to be restored by the employer to the position of the employment held by the employee When the leave commenced".

Section 107(2): "An action to recover the damages or equitable relief prescribe in Paragraph (1) may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees"

STATEMENT OF PROCEEDING AND FACTS

A. PLAINTIFF/APPELLANT EMPLOYMENT AT FOXWOODS

The plaintiff, a non-Indian, was hired as a Table Game Supervisor at Foxwoods Casino on November 25, 1991. The plaintiff start working as a Gaming Supervisor on February 5, 1992 (The casino Grand Opening was on Feb. 14, 1992). The plaintiff had over 10 years of experience in the casino gaming industry mostly as a gaming supervisor in Atlantic City, NJ. and possessed a Casino Gaming License from the U.S. Department of Treasure. The plaintiff/appellant was employed by Foxwoods as a Casino Games Supervisor until his termination on August 29, 2000 and received a top of the class yearly employment evaluation from his supervisors.*¹

B. TRIBAL AND CASINO REGULATIONS REGARDING FAMILY MEDICAL LEAVE.

Tribal and Foxwoods Casino Regulations, Section III - Policy 13*² adopted the Family and Medical Leave Act Regulations as the obligated policy of all agents and employees of Foxwoods with no exceptions. No agent of Foxwoods was authorized to act against Section III - P. 13 of the Tribal Regulations. In all of their own drafted documentation regarding Family and Medical Leave requests Foxwoods obligated itself, its agents and employees to the Family and Medical Leave Act Regulations*³ including its Section 107(a)(2) that provides Federal and States Courts jurisdictions.

Although the FMLA was the obligated Policy of the Casino and its employees Tribal Court could not enforce those Regulations since in case of violations against the FMLA tribal court could not substitute its decision over that of the management.

C. PLAINTIFF WAS DISCRIMINATED FOR TAKING LAWFUL UNPAID LEAVE.

On July 1996 The plaintiff/appellant was granted a Leave to visit his

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1. See Appendix F for plaintiff yearly work evaluation.
 2. See Appendix G for Foxwoods Company Policy, Section III - Policy 13.
 3. See Appendix H for Foxwoods own drafted documents regarding Family Leave requests.

mother who was 78 years of age and resided overseas. After his second request on April 1998* for a lawful family medical leave under the FMLA, the plaintiff was discriminated against by the defendants Mr. Tesler, Ms. Smith, and Mr. Rigot; his promotion was held and his work assignments was derailed. His available vacation time was cut and his bonus at the end of year was reduced.

D. PLAINTIFF TERMINATION AGAINST FMLA AND TRIBAL REGULATIONS.

On August 29, 2000 while the plaintiff was still overseas assisting his seriously ill, 82 years old mother on a Family Medical Leave that was initially authorized by his employer,*⁴ the defendants, he was terminated by the defendants via a letter in the mail in violation of the Family and Medical Leave Act, 1993 Regulations*⁵ and against Tribal and Foxwoods' Company Policy*⁶

An investigation conducted by the Wage & Hour Division of the Department of Labor in the plaintiff's case concluded that Foxwoods and the defendants are an obligated employer to the Family and Medical Leave Act and committed several violations against its Regulations when they unlawfully terminating the plaintiff.*⁷

Ms. Marietta Anderson, Foxwoods and tribal legal Attorney agreed with the finding of the Department of Labor stating that the plaintiff was eligible for a leave under the FMLA so that the plaintiff's termination after 8½ years of employment at Foxwoods was unlawful and in violation of the FMLA Regulations and against Company Policy.*⁸

E. PLAINTIFF WAS DENIED ANY HEARING REGARDING HIS TERMINATION

The plaintiff's illegal termination after 8½ years of loyal service as a Gaming Supervisor at Foxwoods was done in a very humiliating fashion by the defendants

4. See Appendix I for plaintiff's request.

5. See Appendix J for letter of termination sent by the defendants.

6. See Appendix G for Compny Policy, Title "Eligibility" and Title "Return to Work"

7. See Appendix K for Wage & Hour Division of The Dep. of Labor investigation and findings

8. See Appendix K Title "Eligibility".

via a letter in the mail while the plaintiff was still overseas on an authorized leave, only a few days prior to his return from that leave. Upon his return, the plaintiff was denied any hearing in his case by higher management, the defendants, regarding his unlawful termination.

The plaintiff's attempt to bring the case to the tribal court was denied by the tribal Legal Department stating that under tribal rules the Tribal Court does not sit as a judicial tribune in an employment cases of Foxwoods Casino but merely as a Board of Review to the decision of the CEO, if he ever made any, and in any case Tribal Court is not authorized to substitute its decision over that of the CEO and since the CEO did not, and would not make any decision in the plaintiff's case then the Tribal Court was out of jurisdiction to hear the plaintiff's case.

F. PLAINTIFF FILING COMPLAINT WITH THE SUPERIOR COURT

On August 29, 2003 the plaintiff filed a complaint in the Connecticut Superior Court in the town of Norwich* ⁹ against eight individuals employees and agents of Foxwoods, in their personal capacity as well as their professional capacity for unlawfully discriminating and terminating the plaintiff in violation of the Family and Medical Leave Act acting against Tribal and Foxwoods' Regulations and palpably and manifestly beyond the scope of their authority. The Action for damages and equitable relief was filed pursuant to Section 825.107(a) of the FMLA Regulations.

G. DEFENDANTS MOTION TO DISMISS.

The Defendants did not deny the allegations against them but merely stated on October 31, 2004 that since the individual defendants although not Indians, are agents and employees of Foxwoods which owned by Mashantucket Pequot Indian Tribe, they can violate any Federal Law they wish while working at Foxwoods and escape the law of the land by claiming tribal sovereign immunity from suit.

9. See File for plaintiff's complaint.

H. PLAINTIFF OBJECTION TO DEFENDANTS MOTION TO DISMISS.

The plaintiff filed an Objection to the defendants' Motion to Dismiss on Nov. 13, 2003. On his objection the plaintiff stated that First: No employee nor any agent of Foxwoods were authorize to violate the FMLA nor Company Policy, that each and everyone of the individual defendants violated the FMLA and Tribal and Foxwoods' Regulations Section III - Policy 13, acting manifestly and palpably beyond the scope of their authority, and their attempt to hide behind tribal sovereign immunity is without merit. Second: pursuant to various Supreme and Circuit Courts Rulings, the Sovereign Immunity granted to Indian tribes in order to conduct their intramural self-governance issues of the tribe should not be extend to its interstate commerce casino and definitely not to the non-Indian casino employees Third: It would be unconstitutional to deprived the plaintiff of his right to sue for damages under the law, and some more reasons of why the defendants' motion is without merit and should not be grantd*¹⁰.

I. ORAL ARGUMENT

Notice of intention to argue was filed on November 13, 2003, and an oral argument was conducted on December 1, 2003, where the plaintiff proved the court that the individual defendants were acting out of a personal vendetta and not out of professional reasons when they unlawfully terminated the plaintiff against tribal and company policy and manifestly beyond the scope of their authority and their claim for tribal sovereign immunity is without merit*¹¹.

J. PLAINTIFF PETITION FOR DECLARATORY AND INJUNCTIVE RELIF

On February 17, 2004 the plaintiff filed a Petition for Declaratory and Injunctive Relief asking the court to rule on matters of controversy between the parties*¹².

10. See plaintiff's Objection to defendants Motion to Dismiss.

11. See Transcript of Oral Argument in file.

12. See Plaintiff's Petition on file.

Matters of controversy that the court's decision on them are essential to the court decision of whether defendants Motion to Dismiss holds water or is without merit.

K. PLAINTIFF AFFIDAVIT IN SUPPORT OF HIS OBJECTION AND PETITION.

On February 17, 2004 the plaintiff file an Affidavit with the court, an Affidavit that was not contested by the defendants showing the court that the defendants violated the FMLA, knowingly acting against Tribal and Company Policy out of a personal vendetta and acted manifestly beyond the scope of their authority in order to unlawfully discriminate and terminate the plaintiff*¹³.

L. PLAINTIFF'S MOTION TO STAY DECISION AND MOTION TO AMEND

On March 3, 2004 the plaintiff filed a motion to stay decision on defendants Motion to Dismiss till after court decision on plaintiff's Petition for Declaratory and Injunctive relief which is essential to the question of whether motion holds water or is without merit*. On March 31 the plaintiff motion the court to amend the statutory reliance of the plaintiff's motion to stay*¹⁴.

M. COURT JUDGMENT AND MEMORANDUM OF DECISION ON MOTION

On April 23, 2004 the court decided to grant defendants Motion to Dismiss, it delivered its judgment of dismissal of the case*¹⁶, and filed a memorandum of its decision*¹⁵, 145 days after the court hearing of the parties Oral Argument.

N. PLAINTIFF'S MOTION TO VACATE ORDER AND MOTION TO REARGUE.

On May 3, 2004 the plaintiff filed Motion to Vacate court decision since court ruling on the motion was delivered past the 120 days permitted by the law, and court never asked the parties' consent for delaying its decision past 120 days.*¹⁷

13. See plaintiff's Affidavit on file.

14. See plaintiff's Motion to Stay on file.

15. See plaintiff's Motion to Amend on file

16. See Court Judgment and Memorandum of decision Appendix B.

17. See Plaintiff's Motion to Vacate and Motion to Reargue, on file.

O. PLAINTIFF APPEALING SUPERIOR COURT DECISION TO DISMISS.

On may 13, 2004 the plaintiff filed an appeal eith the Connecticut Appellate Court followed by a Brief and Appendix to the brief. The appeal was docketed on No. A.C. 25450.

P. ORAL ARGUMENT ON THE APPEAL.

Oral Argument conducted by the Connecticut Appellate Court on February 17, 2005

Q. APPELLATE COURT DECISION

On June 28, 2005 the Appellate Court officially rendered its decision to affirm the Superior Court decision to dismiss the case for lack of jurisdiction*.¹⁸

R. COURT DENIED PLAINTIFF'S MOTION FOR RECONSIDERATION EN BANC.

On July 11, 2005 the Plaintiff file for his Motion for Reconsideration En Banc, his Motion for Reconsideration was denied on September 14, 2005*.¹⁹

S. PLAINTIFF PETITION FOR CERTIFICATION OF STATE SUPREME COURT.

On October 3, 2005 the Plaintiff filed his Petition for Certification in the State of Connecticut Supreme Court. His petition was denied on November 3, 2005.*²⁰

T. APPLICATION FOR EXTENSION OF TIME FOR CERTIORARI GRANTED.

Plaintiff's application for an extension of time within which to file a Petition for a Write of Certiorari was granted on December 28, 2005. The U.S. Supreme Court extended the time to and including April 3, 2006*.²¹

18. See Appendix A for Appellate Court decision.

19. See Appendix D for Motion for Reconsideration.

20. See Appendix C for Petition for Certification from State Supreme Court

21. See Appendix E for U.S. Supreme Court granting extension of time to file.

REASONS FOR GRANTING THE PETITION

A. THE IMPORTANCE OF A SUPREME COURT RULING ON THE LEGAL STATUS OF INDIAN CASINO AND THEIR EMPLOYEES. ARE THEY ABOVE THE LAW?

The above ruling by the lower courts that Federal Labor Laws CAN NOT be enforced not only upon Indian Casinos but, it CAN NOT be enforced upon their employees as well is outrageous, unconstitutional, and should NOT be tolerated in the 21st. Century United States of America.

Senator Edith Prague of Connecticut stated in her testimony at the National Gambling Impact as follows: "Again I strongly believe that the treatment of workers at Foxwoods is unacceptable.... I am not oppose to sovereignty. I am however oppose to the tribe using sovereignty as a weapon to shield themselves from having to behave fairly and decently with their workers..... Current employee rights at Foxwoods are very limited... As of July 1997 a total of 81 terminated employees had brought cases to the Tribal Court, only two employees had won their job back. One of them died before he could go back to work.... you will find that workers at Foxwoods do not have adequate legal protection"*

"Foxwoods Resort Casino employs over 10,000 people and native American gaming facilities are becoming more numerous throughout the country. Clearly, tribal sovereignty has the potential to deny many Americans employment benefits and rights that Congress has seen fit to extend to the private sector." See Chayoon V. Reel.*

In Connecticut alone there are more than 25,000 non-Indian employees of Indian casinos, if the lower court decision would stand it would mean for them that their legal status are of paid SLAVES with NO legal rights, that the law of the land is what the owner wants it to be the law of the land.

22. See Appendix L for Senator Prague's testimony
23. 355 F. 3d. 141 (2ed Cir. 2004)

Moreover, the lower court, in its controlling decision elevated the legal status of non-Indian employees of Indian Casino acting AGAINST Tribal Regulations and beyond their scope of authority while violating a Federal Labor Law, (The FMLA in our case) to the legal status of an Indian Tribe acting in self-governmental issue of the tribe, stating out loud that ALL EMPLOYEES OF FOXWOODS CASINO WHO VIOLATES ANY FEDERAL LAW CAN ESCAPE THE LAW OF THE LAND BY CLAIMING TRIBAL SOVEREIGN IMMUNITY FROM SUIT EVEN IF THEIR UNLAWFUL ACT WAS OUT OF PERSONAL VENDETTA AND IN VIOLATION OF TRIBAL REGULATIONS. This decision should be reviewed and reversed.

The United States Congress, when it rendered sovereign immunity to Indian tribes, definitely did not mean to encourage and to give a green light to all interstate commerce Indian casino's management and employees to violate any Federal Law they wish, destroying other people life and rights in the process and then, escape the law of the land by claiming Tribal Sovereign Immunity from suit. Tribal sovereign immunity was given to Indian Tribe so they can protect their culture, their heritage and their political integrity and not to be used as a weapon by any agent/management or employee of a commercial interstate casino to deprive other people's lawful rights and to destroy fellow Americans life and livelihood just because somebody felt like it.

Tribal sovereign immunity from suit has the potential to deprive American citizens their Constitutional rights for "Due Process of the Law" (Amendments Fourteenth and Fifth of the U.S. Constitution). Any rule that has the potential to deprive Americans from rights granted to them by the Constitution should apply in a very limited and a restrictive manner and it SHOULD NOT be extended to all employees of an Indian casino violating Federal Labor Laws acting out of personal vendetta and for personal reasons in matters that has nothing to do with any governmental issue of the tribe. This legal approach to Indian sovereignty was emphasized in various U.S. Supreme courts' decision as would be shown in the next paragraph.

B. DISTINCTION BETWEEN SOVEREIGNTY OF A TRIBE ACTING IN GOVERNING ISSUE AND CASINO EMPLOYEE VIOLATING THE LAW FOR PERSONAL REASON

The lower court in its controlling decision elevated the legal status of non-Indian employees of Foxwoods Casino acting against tribal policy and beyond scope of their authority while violating a federal law, to the status of an Indian tribe acting in a self-governance issue of the tribe. This decision should be reversed by the appellate court

Tribal sovereign immunity from suit has the potential to denied American citizens their constitutional right for "Due Process of the Law"*²⁴. Any rule that has a potential to deprive Americans from a right granted to them by the constitution should apply in a very limited and restrictive manner. The Supreme Court and several Circuit Courts of Appeals including the Second Circuit in varies decisions did just that.*²⁵

The US Supreme Court in MONTANA*²⁶ narrowly defined Indian tribes inherit power to protect self-government and to control internal relation as: "The power to punish tribal offenders... to determine tribal membership, to regulate domestic relations among members, and to prescribe rules of inheritance for members. Indian tribe may regulate any internal conduct which threatens the "political integrity, economic security, or the health or welfare of the tribe". Id at 564. The court went on and stated: "But exercise of tribal power beyond what is necessary to protect tribal self-government or to control internal relation is inconsistent with the dependent status of the tribe, and so cannot survive without expressed congressional delegation." Id.

In OLIPHANT*²⁷ the US Supreme Court carved out an "inherit limitation" on tribal sovereignty, and much of the language used by the Supreme Court in protecting a tribal sovereign immunity, pals when cast in the shadow of non-Indian interest. The protection of the sovereign integrity of a tribe is unwarranted when it effects non-Indian.

24. In his objection to the Motion to Dismiss ~~the~~ the plaintiff presented these cases.

25. Amendments Fifth and Fourteenth of the Constitution.

26. Montana V. United States, 450 US 544, 564 (1981)

27. Oliphant V. Suquamish Indian Tribe, 436 US 191, 206 (1978)

In DURO V. REINA²⁸ The U.S. Supreme Court specifically limited the legal sovereignty of Indian tribes; "The tribe retained sovereignty reaches only that power needed to control internal relations, preserved their own unique customs and social order and prescribe and enforce rules of conduct for their on members".*²⁹

In NEVADA V. HICKS³⁰ The U.S. Supreme Court held that: "The exercise of tribal power beyond what is necessary to protect tribal self-government or to control internal relations... cannot survive without expressed congressional deligation in Montana V. United States applies to both Indian and non-Indian land." Id

The Second Circuit Court Appeals in Reich V. Mashantucket Sand & Gravel³¹ stated that: "An entity is owned by the tribe, operates as an arm of a tribe, or takes direction from the tribal council, does not ipso facto elevate it to the status of a tribal government" Id. 181. The court ruled that the mighty power of tribal sovereign immunity granted to Indian tribes acting in intramural governmental issue should not be delegated to any agent of an Indian casino violating a federal law. The Second Circuit, in a direct relation to Foxwoods stated: "MSG continue to built construction on on Foxwoods casino. MSG Does not contest that the casino operates in and effects interstate commerce....When a tribal operation effects open markets, it is unlikely that the operation is purely intramural. See Coeur d' Allen, 751 F. 2d at 1116 (operation of a farm which employs non-Indians and sell product in open market does not touch tribal self-government). Id at 182.

In the above case complaint where the defendants, non-Indian employees/agents of Foxwoods, terminated the plaintiff out personal vendetta in violation of the FMLA, their unlawful act had nothing to do with any governmental issue of the tribe and the ruling that the plaintiff is deprived of his right to sue for damages, is unconstitutional.

28. Duro V. Reina, 495 US 676 (1990)

29. Also Strate V. A-1 Con. 520 US 438 (1997). Indian Authority not extend to non members.

30. Nevada V. Hicks, US 196 F. 3d. 1020, (2001)

31. Reich V. Mashantucket Sand & gravel 95 F. 3d. 174 (CA2 1996).

The right of action granted to the plaintiff by an Act of Congress to file suit for damages in a court of law³² pursuant violations under the Family and Medical Leave Act committed by the defendants, cannot be deprived without violating the Fifth and the Fourteenth Amendments of the Constitution.

The above non-Indian individual defendants violating the FMLA and acting against Tribal Regulations³³ when they discriminated and terminated the plaintiff in the most humiliating fashion after 8½ years of loyal service, cannot be clothed with the tribal sovereign immunity from suit to protect them from the supreme law of the land, as it was so established in Ex Parte Young,³⁴ and was recognized as applying to Indian tribal official in Puyaliup Tribe V. Washington Department of Games³⁵ and has been expressly cited in Santa Clara Pueblo V. Martinez³⁶ as well as elsewhere.

The Ninth Circuit Court of Appeals, in Burlington Northern Railroad V. Blackfeet Tribe³⁷ concluded as follows: "Tribal sovereign immunity DOES NOT bar a suit for prospective relief against tribal officers allegedly acting in a violation of a federal law."

Tribal sovereignty was granted to Indian tribe in order to preserve their culture, their own unique customs and social order. But exercise of that power beyond what is necessary to protect tribal self-government, is unconstitutional.³⁸ That great power of sovereign immunity was not intended to, and could not bar suit in a court of law against non-Indian employees of an interstate commerce casino who violated federal law, acting against tribal Regulations and Policy³⁹ without authority, out of personal vendetta, granting immunity (and a free pass to violate any law they wish) to those employees, depriving plaintiff of his right for "Due Process", is unconstitutional.

32. Pursuant to §107(a)(2) of the FMLA (1993), "Right of Action".

33. Tribal Regulations; Section III- Policy 13. See Appendix C.

34. Ex Parte Young, 209 U.S. 123 (1908)

35. 433 US 165, 171-173, (1977).

36. 436 US 49, 59, (1978).

37. 924 F. 2d. 899, 901, (9th Cir. 1991)

38. See Montana V. United States, 450 US 544, 564 (1981)

39. Tribal Regulation; Section III- Policy 13, Appendix C.

C. A FEDERAL STATUTE THAT IS SILENT IN ITS APPLICABILITY TO INDIAN TRIBE SHOULD APPLY TO AGENT AND EMPLOYEE OF AN INDIAN CASINO

The question whether a Federal Statute that is silent in its applicability to Indian tribes would apply to Indians and their property interest was raised in a Supreme Court case of *Federal Power Comm'n V. Tuscarora Indian Nation*⁴⁰, and the court concluded that: "a general statute in terms applying to all persons including Indians and their property interest".

The Ninth Circuit in *Coeur d'Allene*⁴¹, The court examined whether OSHA applied to a tribal farm and concluded that if the application of the law to the tribe would not "abrogate rights guaranteed by Indian treaties", and the Statute is silent as to Indians then, if the statute's application would not interfere with tribal self-governance over PURELY INTRAMURAL MATTERS it would apply to Indians and their property interest.

The Seventh circuit has come to a similar conclusion in *Smart V. State Farm*⁴² a tribe argue that ERISA did not apply to Indians because it effect tribal sovereignty. The Seventh Circuit, following *Coeur d'Allen*, reasoned that ERISA do apply to Indian tribe despite its effect on sovereignty in general. The court concluded that "[a] statute of general application will not be applied to an Indian tribe when the statute threatens the tribe's ability to govern its intramural affairs, but not simply whenever it merely effects self-governance as broadly conceived" Id at 935.

The *Coeur d'Alen* test of "tribal self-governance over purely intramural matters" was applied by the Second Circuit in *Reich V. Mashantucket Sand & Gravel*⁴³ (MSG) the court concluded that since MSG "hires non-Indians and continues to work on

40. *Federal Power Comm'n V. Tuscarora Indian Nation*, 362 U.S. 99, 116, (1960).
41. *Donovan V. Coeur d'Allen Tribal Farm*, 751, F.2d 1113 (9th Cir. 1985).
42. *Smart V. State Farm Insurance Co.* 868 F. 2d 929, 935 (7th Cir. 1989).
43. *Reich V. Mashantucket Sand & Gravel*, 95 F. 3d. 174, (CA2 1996)

the construction of FOXWOODS, (whose employees and agents are the defendants in the above case complaint) a casino clearly operating in interstate commerce. The nature of MSG's work, the employment of non-Indians and the continuing work at Foxwoods, taken together, doom MSG's claim that its work implicates exclusive rights of self-governance in purely intramural matters". The court continued; "MSG's employment of non-Indians weighs heavily against its claim that its activities affect rights of self-governance in purely intramural matters. In general, tribal relation with non-Indians fall outside the normal ambit of tribal self-government. Furthermore, intramural matters generally consist of conduct of immediate ramifications of which are felt primarily within the reservation by members of the tribe. CF. Farris, 624 F. 2d at 893 (intramural activities in the nature of condition of tribal membership, domestic relation, and inheritance rules). Id at 181. "When a tribal operation affects open market, it is unlikely that its operation is purely intramural." Id at 182. "The question is not whether the statute effect tribal self-governance in general, but rather whether it effects tribal self-governance in purely intramural matters....The nature of MSG's activities, its employment of non-Indians, and its construction at Foxwoods render its conduct extramural.

In the above case complaint, where Plaintiff was terminated by the defendants, individual employees and agents of Foxwoods Casino, in violations of the FMLA, for their own personal reason, against tribal Regulations and policy, and beyond their scope of authority, bringing this case to court in a claim for damages and injunctive relief under §107(a)(2) of the FMLA, would not interfere with any self-governance issue of the tribe, neither intramural nor extramural, and the defendants' motion to dismiss the case for lack of jurisdiction is just an unlawful attempt by the defendants to escape the law of the land by hiding behind the cloth of tribal sovereign immunity and their request to receive a "free pass" and court stamp of approval to violate any federal law they wish and get out free and clear should not be granted by the court.

D. PLAINTIFF WAS DENIED REMEDY IN TRIBAL COURT FOR NO JURISDICTION COURT RULING THAT NO COURT HAS JURISDICTION IS UNCONSTITUTIONAL

Plaintiff was unlawfully terminated from employment as Table Game supervisor at Foxwoods after 8½ years of loyal service, via a letter in the mail, while he was still overseas on an initially granted Family Medical Leave. His unlawful termination was decided by some individuals in the casino management (the defendants) out of a personal vendetta. Upon his return, the plaintiff was denied any hearing regarding his termination. His attempt to file his case in the Mashantucket Pequot Tribal Court was denied by the Tribal Legal Department*⁴⁴ stating that according to the Tribal Court Rules and Regulation the court has no jurisdiction to sit as a Judicial Tribune to employment cases of Foxwoods Casino but only as Review Board to a decision of the CEO/President if he ever mad any, and even then, it cannot substitutes its decision over that of the CEO but merly to express its view where the decision of the CEO was arbitrary or capricious*.⁴⁵ In the plaintiff's case where the CEO did not and would not make a decision, the Tribal Court had no jurisdiction to try the case.

In the US Supreme Court case of Nevada V. Hicks*⁴⁶ the court ruled that: "Tribal courts are not of general jurisdiction...tribal court jurisdiction over nonmembers is at most only as broad as legislative jurisdiction." Pp 12-15, and "Petitioners were not required to exhaust their claim in the tribal court before bringing them in the Federal District Court because the rule that tribal court lacks jurisdiction...is clear, adherence to the tribal exhaustion requirement would serve no purpose other then delay, and therefor is unnecessary." Pp 15-16.

44. See plaintiff affidavit presented to the lower court, ~~Appendix~~ *ON FILE*

45. Pursuant to the Mashantucket Pequot Tribal Nation, Tribal Law and Rules of Court; under Title "Employment". Also Tribal Court ruling on Deluca V. M.P.G.E. (MPTC EA-99-103): "Tribal court can only determine whether the CEO decision was arrived at in arbitrary or capricious manner or whether he abused his discretion". Also Thompson V. M:P.G.E. 1 MPR 22, 24, (1996); "The trial court may not retry the case no substitute its judgment over that of the President/CEO"

46. Nevada V. Hicks, U.S. 196 F. 3d. 1020 (2001)

Section 107(a)(2) of the Family And Medical Leave Act (1993) (FMLA) provides any employee who was unlawfully discriminated or terminated by his employer in violation of the FMLA, with a Congressional RIGHT OF ACTION to recover damages or equitable relief in any Federal or State court.

The Fifth Amendment to the U.S. Constitutional states: "No person shall be... nor be deprived of life liberty or property without the due process of the law"

The Fourteenth Amendment States: "Nor shall any State deprive any person of life liberty or property without due process of the law; nor deny to any person within its jurisdiction the equal protection of the law."

The U.S. Supreme Court on Anniston Mfg. Co. V. Davis*⁴⁷ ruled that the denial of a taxpayer of the right to sue for refund of processing and floor stock taxes collected under the law, subsequently held unconstitutional.

The ruling by the lower court that no Court would possess subject matter jurisdiction on a rightful claim for damages under the law, a right that was granted to the Plaintiff by an act of Congress, should be held unconstitutional.

Tribal sovereign immunity from suit touches the Fifth and the Fourteenth amendment. It has the potential to deny many American citizens their constitutional rights for "Due Process of the Law" and "The Equal Protection of the Law". Therefore, that Sovereign Immunity granted to the tribe should be applied in a limited and restrictive manner, only to intramural self-governance issue of the tribe, as it was so directed by many Supreme Court rulings. In no way that ultimate power of immunity, that even Federal and State's Agencies do not enjoy*⁴⁸ would be granted to any employee or agent of Foxwoods Casino violating a Federal Law for personal reason, out of personal vendetta, against tribal policy and beyond scope of authority.

47. Anniston Mfg. Co. V. Davis, 301 U.S. 307 (1937)

48. Pursuant to the FMLA Section 107(a)(2) "An action to recover damages...can be maintain against any employer (including a public agency)" Federal and State agents.

E. SUPERIOR COURT DECISION LACKS THE "EQUAL PROTECTION OF THE LAW"

Amendment Fourteenth of the Constitution states: "...Nor shall any state deprive any person of life, liberty or property, without due process of the law; Nor deny to any person within its jurisdiction the equal protection of the law."* ⁴⁹

Superior court decision was so one sided towards the defendants that it deprived the plaintiff his constitutional right for "Equal protection of the law" as follows:

1. In his Objection to the defendants Motion to Dismiss the plaintiff presented the trial court with several US Supreme court and circuit courts' cases and precedents showing that Tribal Sovereign Immunity from suit should be limited to an "Intramural self-governance issue of the tribe" and should not be delegated to non-Indian agents of an Indian casino violating a Federal Statute (especially when acted against Tribal Regulations).*⁵⁰ The lower court, in his controlling decision did not relate at all to any of those, much relevant, cases but did relate (and emphasized) most of cases presented by the defendants.

2. In its controlling decision the court twisted and changed keyed elements in the plaintiff's plea to be almost unrecognized. For example; In its decision*⁵¹ the court states: "In the present action, the plaintiff does not allege that the tribe has waived immunity from suit...", while in fact the plaintiff not only alleged but even presented the court with proof to support that allegation.*⁵² Another example; the court has stated: "The plaintiff merely alleges that the defendants acted beyond the scope of their authority because they violated the Family and Medical Leave Act".*⁵³ That decision controlling statement of the court is incorrect, the plaintiff, in his Objection to defendants' Motion to dismiss, in his Affidavit, in his petition for Declaratory, and

49. The plaintiff showed the court earlier how he would be deprived of the "Due process of the law" of his right to sue if court decision to dismiss for lack of jurisdiction, would stay.

50. See plaintiff Objection to defendants' motion to dismiss and Transcript of Hearing.

51. See court's Decision, Appendix B Page 5, middle of the page.

52. See plaintiff's Objection to Motion to Dismiss, and Transcript of Oral Argument.

53. See Court's Decision Appendix B, Page 7, Line 4.

in his Oral Argument, claimed and proved the court that the defendants acted beyond the scope of their authority because they violated the FMLA acting AGAINST Tribal Regulations and Company Policy*⁵⁴ and because no agent of Foxwoods Casino was authorized to act against tribal Regulations and Company Policy nor to violate FMLA Regulations. (these are only two examples among others).

3. Superior Court in its controlling decision gave the defendants' affidavit the utmost attention, treating it as a fact, while it gave no consideration to the plaintiff's affidavit*⁵⁵ treating it like it was not there.

4. The court should have, but did not, attend to the plaintiff's Petition for Declaratory and Injunctive Relief*⁵⁶ where the plaintiff requested the court to decide on matters of controversies of law and facts between the parties which aroused out of, are in the heart of, and are essential to court decision on the defendants Motion to Dismiss.

5. Beside the fact that the court sometimes omitted, other times twisted the plaintiff's undisputed statement of facts and did not attend to any of the plaintiff argument of law in support of his plea that the defendants were not entitled to the tribal immunity from suit, the court also added and inserted own emphasis to citation of cases it presented; like inserting "and it shown" to a court citation "...lies outside of the scope of tribal immunity only where the complaint plead that a tribal official acted beyond the scope of his authority.."*⁵⁸ and in other occasion*⁵⁸ so it would support its decision the court also drew the opposite conclusion from the U.S. Supreme Court's held decision in the case of C&L Enterprise*⁵⁹ that a signature of a tribe on a contract which refer the parties to a State Law of arbitration is a waiver of tribal sovereign immunity, wrongly stating that the Supreme Court held that it is not a waiver.*⁶⁰

54. See Tribal Regulations, Section III - Policy 13, Appendix G. which is parallel to the FMLA.

55. See Plaintiff's affidavit in Court File.

56. See Plaintiff's Petition for Declaratory and Injunctive Relief, in Court File

57. Citation brought from Basset V. Mashantucket, see Court Decision Page 5, on bottom.

58. Inserting "all" to citation from Basset "...extends to employees acting..." Page 4, on bottom.

59. C&L Enterprise Inc. V. Citizen Band of Potawatomi Indian Tribe, 532 US 411 121S (2001)

60. See Superior Court Decision App. B. Page 5, Footnote 5..

H. PLAINTIFF DID ALLEGE, AND PROVED, THAT TRIBE HAS WAIVED IMMUNITY

In each and every one of its documents relating Family Medical Leave request the tribe and Foxwoods obligated themselves to the Family and Medical Leave Act (1993)*⁶¹

The Superior court in its controlling decision stated:*⁶² "In the present action, the plaintiff does not allege that the tribe has waived immunity from suit..". That statment the court is not accurate to say the least. The plaintiff not only alleged but he proved and presented the court with the documentation supporting that fact.

In his objection to the defendants' motion to dismiss,*⁶³ the plaintiff pleaded: "The tribe did wave its immunity from suit...to the FMLA. It portrayed its waiver via its agents at the Human Resources and It portrayed its waiver in writing on all its own drafted forms regarding Family Medical Leave..... The tribe also portrayed its waiver.....to the Connecticut DOL Wage & Hour Division in regard to Class III Casino operation under the IGRA...." The plaintiff also refer the court to exhibits A and B where he proved the court his plea. That fact was not disputed by the defendants.

In his Oral Argument*⁶⁴ the plaintiff plead and proved the court via documents he presented the court with the written obligation and waiver of Foxwoods and the Tribe to the FMLA*⁶⁵. In his Petition for Declaratory and Injunctive Relief, plaintiff requested the court to issue an order of injunction to the defendants to refrain from claiming immunity since they have waved it, but the court did not attend to that Petition.

In footnote 5 of its decision, the court mentioned the Case of C & L Enterprise V. Citizen Band*⁶⁶ which supports the plaintiff's claim that tribal obligation to a Statute on a form they have signed, is a clear waiver of immunity to apply that Statute, but the court drew an oposite conclusion from that U.S. Supreme Court case.*⁶⁷

61. See Foxwoods and Tribe's own drafted documents relating Family Medical Leave. App. H.
62. See Court Decision Appendix B. Page 5, middle of the page.
63. See plaintiff's Objection to defendants' motion to dismiss, (on file) page 5.
64. Oral Argument Hearing, Exhibition No. 8. Transcript; page 13, line 25.
65. See transcript of Oral Argument, Page 13, line 11- Page 15, line 8.
66. C&L Enterprise V. Citizen Band of Potawatomi 532 U.S. 411, 121 S. Ct. 1958 (2001)
67. Id at 1594-95 The US Supreme Court held that a tribal signature on a contract that obligate the parties to a arbitration law of a state, should be considered a waiver of immunity.

CONCLUSION

Indian Casinos Industry is growing throughout the United States. In Connecticut alone over 25,000 non-Indian employees are working for Indian casinos.

The lower courts decision that any employee/management of an Indian Casino can violate any Federal Labor Law (and any other Federal law for that matter) even if it is for personal reasons, out of personal vendetta, against tribal Regulations and beyond the scope of his authority, can still escape the law of the land by claiming tribal sovereign immunity from suit is outrageous and unconstitutional and is definitely NOT what Congress meant when it granted sovereign immunity to Indian Tribes.

The sovereign immunity of Indian tribes which was given to the tribe so they can protect their culture and heritage and to regulate domestic relation among their members (See Montana) should NOT be used by an employee of an Indian Casino as a shield to protect himself from the law of the land after he violated a Federal Law out of a personal reason just because he felt like it. This is a very dangerous ruling in any democracy especially in United States. American citizen's Constitutional right for "Due Process of the Law" and "Equal Protection of the Law" should not be compromised when an agent of Indian Casino violates a federal law out of personal vendetta and for his own personal reasons.

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted.

Joseph Chayoon

Joseph Chayoon

Petitioner, Pro-se.

P.O. Box 1535

Westerly, RI. 02891

Phone: (401)322-9131

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