**2019 NNBA ANNUAL CONFERENCE**

**FEDERAL LITIGATION UPDATE**

**PAUL SPRUHAN**

**NAVAJO NATION DEPARTMENT OF JUSTICE**

**FEDERAL CASES**

**FEDERAL APPELLATE CASES**

***Brackeen v. Bernhardt* (5th Cir.)**

**(Challenge by non-Indian foster/adoptive parents and states of Texas, Indiana, and Louisiana to Indian Child Welfare Act and regulations as race-based statute in violation of equal protection, Tenth Amendment, Non-Delegation, and Administrative Procedures Act)**

**(Northern District of Texas struck down ICWA and its regulations on those grounds; Appeal filed in Fifth Circuit; Nation intervened in Fifth Circuit)**

**(Oral argument held March, 2019; Awaiting decision)**

***Carter v. Sweeney* (9th Cir.)**

**(Goldwater Institute challenge on behalf of non-Indian foster parents to Indian Child Welfare Act as race-based statute in violation of equal protection)**

**(dismissed by Federal District Court of Arizona on standing; affirmed by Ninth Circuit on mootness; Cert. Denied by U.S. Supreme Court)**

***Dine Citizens Against Ruining our Environment v. Bureau of Indian Affairs* (9th Cir.)**

**(challenge to issuance of permits and lease for Navajo Mine and Four Corners Power Plant alleging NPEA and ESA violations in Biological Opinion and Environmental Impact Statement)**

**(Dismissed by Federal District Court of Arizona due to sovereign immunity of Navajo Transitional Energy Company and required party status under Rule 19 of the Federal Rules of Civil Procedure)**

**(Nation filed amicus brief)**

**(Oral Argument held March, 2019; Awaiting decision)**

***Employers Mutual Casualty Co. v. Branch* (9th Cir.)**

**(Suit by insurance company defendant in *Navajo Nation v. Pic-N-Run*, pending in Chinle District Court, challenging Nation’s jurisdiction)**

**(Federal District Court of Arizona granted EMC summary judgment, ruling Nation’s courts had no jurisdiction over non-Indian insurer of non-Indian entities involved in gas spill; Nation appealed)**

**(Briefing to begin in July, 2019)**

***McNeal v. Navajo Nation* (10th Cir.)**

**(Challenge by Nation to provision of New Mexico gaming compact purporting to allow tort claims against Nation by casino visitors in New Mexico state court)**

**(Federal District Court ruled compact provision was valid; Nation appealed)**

**(10th Cir. reversed, ruling compact provision violated Indian Gaming Regulatory Act)**

**(Cert. Denied)**

***Navajo Nation v. San Juan County*, (10th Cir.) (suit by Nation challenging County districts for county commission and school board as violations of equal protection and Voting Rights Act of 1965)**

**(District Court ruled county commission districts were illegal racial gerrymandering and school board districts violated one-person one-vote; ordered redrawing of districts through special master and new elections)**

**(County appealed)**

**(Oral Argument heard in November, 2018; Awaiting decision)**

***Navajo Nation v. United States Department of the Interior* (9th Cir.)**

**(whether human remains taken from Canyon de Chelly are subject to NAGRPA’s inventory requirement)**

**(Case settled; remains returned to Nation custody and reburied; Opinion on Final Agency Action under Administrative Procedures Act remains in effect)**

***Navajo Nation v. Wells Fargo* (10th Cir.)**

**(Suit under federal and state law for opening accounts and other products for Navajos)**

**(Dismissed by District Court for res judicata and lack of standing; Nation appealed to Tenth Circuit)**

**(Settlement in principle reached)**

**DISTRICT COURT CASES**

***Corporation of the President of the Church of Jesus Christ of Latter Day Saints v. BN*, (D. Utah)**

**(jurisdictional challenge concerning tort claim filed in Window Rock District Court for sexual abuse of Navajos in Indian Student Placement Program)**

**(Pending motion to dismiss by Navajo defendant; no Navajo officials named as defendants)**

***Navajo Nation v. Department of Interior* (D. Az.)**

**(Breach of trust suit against Department of Interior for failure to consider the Nation’s claims to the Colorado River in management of river)**

**(On remand from Ninth Circuit reversal of dismissal of breach of trust claim; Nation filed motion to file amended complaint; pending decision on motion)**

***Navajo Nation v. Department of Interior* (D. D.C.)**

**(Claim for additional 638 contract funding for Navajo courts; on remand after Circuit Court for D.C. reversed dismissal by District Court of D.C.)**

**(pending resolution of amount of money to award Nation for Judicial Branch contract)**

***Navajo Nation v. Perdue* (N.D. Ohio)**

**(Suit against opioid manufacturers, distributors, and pharmacies under federal and state law for damages related to opioid misuse)**

**(Pending as part of multi-district litigation)**

***Navajo Nation v. Reagan* (D. Az.)**

**(Suit against three surrounding counties and the Arizona Secretary of State for violations of voting rights of Navajos under the First Amendment, Fourteenth Amendment, Section 1983, the Arizona Constitution and the Voting Rights of 1965)**

**(In settlement discussions)**

***Navajo Nation v. Sessions* (D. Az.)**

**(Suit by Nation against U.S. Department of Justice and City of Winslow and its officer for shooting death of L’Oreal Tsingine)**

**(Dismissed by District Court for lack of standing and failure to state a claim)**

***Navajo Nation v. U.S. EPA* (D.N.M.)**

**(Suit for damages under CERCLA and FTCA for Gold King Mine release)**

**(District Court denied defendants’ motion to dismiss; moving to discovery phase)**

**Non-Navajo Cases of Note**

***Knighton v. Cedarville Rancheria of Northern Paiute Indians* (9th Cir.)**

**(Jurisdictional challenge to tribal court action involving alleged fraud by former employee of tribe)**

**(Ninth Circuit rules a tribe has jurisdiction on tribal trust land either under the right to exclude or under *Montana* framework)**

***Herrera v. Wyoming* (U.S. Supreme Court)**

**(Challenge to state prosecution for hunting violations under Crow Treaty of 1868)**

**(Court upholds off-reservation treaty right as not abrogated by Wyoming statehood or mere existence of National Forest; remanded for further proceedings on conservation and occupied nature of specific area of forest)**