14-1521

No. _____

In the Supreme Court of the United States

VINCENT TORRES,
Petitioner,

v.

THE SANTA YNEZ BAND OF CHUMASH INDIANS,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Was Petitioner denied due process of law when the Indian Tribal Chairman Armenta filed a false claim in Bankruptcy as part of a long pattern and campaign of harassment against Petitioner and the Bankruptcy Court refused to impose sanctions, simply because she believed she could not find grounds for sanctions because much of the pattern of the ***ultra vires*** conduct of Chairman Armenta did not occur in her court?

2. Has the recent decisions of this court in *Bay Mills Indian Community*, 572 U.S. ___, 134 S.Ct. 2024 and the Ninth Circuit court of appeals recent case in *Maxwell v. County of San Diego*, 708 F.3d 1075 (9th Cir. 2013) expanded the liability of tribal officers engaging in unlawful and abusive acts while purporting to do so on behalf of the Indian tribe and who then seek to invoke the tribes sovereign immunity to evade liability?

3. Even though the sanction motion had to be brought on its face, against the tribe (who waived tribal immunity in the bankruptcy case), the court was authorized in its inherent jurisdiction to impose sanctions against the improper actions of chairman Armenta even though claimed to have been done on behalf of the tribe.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTION

STATUTES

RULES

BLANK PAGE

OPINIONS BELOW

At the conclusion of a series of bankruptcy actions and when the three million dollar false claim of the Santa Ynez band filed in Petitioner Chapter 11 case by Tribal Chairman Armenta was denied, Petitioner filed a motion and claim for sanctions in the Bankruptcy Court claiming at least compensatory sanctions in the amount of the approximately $550,000 he had to expend to defend himself from a long pattern of illegal and improper actions undertaken by Chairman Armenta done by him ostensibly in the name of the Indian tribe but clearly not authorized or justified.

That motion was denied when the Bankruptcy judge found no grounds for any sanctions because the long pattern of illegal harassment actions by Chairman Armenta and abuses of process he engaged in "did not occur in her court." No effort was made to determine if any of the challenged actions were authorized by the tribe despite presentation of evidence that they were not.

Petitioner appealed to the District court for the Central District of California judge Michael W. Fitzgerald presiding who affirmed the Bankruptcy Judge Robin Riblet's decision, which is unreported. Petitioner appealed In Propria Persona to the Ninth District Court of Appeals who affirmed the District court judgment in a 1 page decision without significant discussion of issues, which was unreported.

STATEMENT OF JURISDICTION

This court has jurisdiction to review and accept Petitioner's petition for writ of certiorari under Article III of the United States Constitution and 28 U.S.C. § 1291.

CONSTITUTIONAL PROVISIONS INVOLVED

The relevant statutory provisions involved in this case are the Fourth and Fourteenth Amendments to the United States Constitution and reproduced in Appendix D.

INTRODUCTION

The bankruptcy court's refusal to consider Petitioners Motion for Sanctions for a long history of harassment, abuse of legal processes by tribal Chairman Armenta of the Santa Ynez Band of Mission Indians, including the filing of a knowingly false claim in Petitioners Chapter 11 case by Chairman Armenta for no lawful purpose, violated Petitioners Constitutional rights. In refusing to consider Petitioners right to recover his attorneys fees the bankruptcy court below denied Petitioner's Constitutional rights to due process of law under the Fourth and Fourteenth Amendments to the United States Constitution.

Petitioner was entitled to an order for sanctions at least in the amount of over $550,000 in attorneys fees he suffered as a result of the abusive and unlawful pattern of harassment by tribal Chairman Armenta. The fact that some parts of the ongoing pattern of harassment occurred in other courts and contexts and outside of the bankruptcy action did not render

Petitioner's right to sanctions in the bankruptcy action unrecoverable and prevent that court from imposing sanctions.

STATEMENT OF THE CASE

On or about the spring of 1999 Petitioner, a California contractor, entered into a contract to install street lighting on property belonging to the Santa Ynez Band of Mission Indians. The contract was made between the then Chairman Alex Valencia and the tribe's business committee for a fixed price of $780,000.

After commencing the work on the street lights the tribe and Petitioner entered into a series of smaller *ad hoc* contracts to do other work on tribal land, installing a drainage system, road grading, building a parking lot for buses bringing gamblers to the tribal casino, and a massive clean-up project to remove tons of trash from the Sanja Cota creek bed where the tribe had allowed tribal members to dump old cars, refrigerators and a wide variety of trash, including some classified as hazardous materials.

The tribe wanted to clean up and neaten the reservation for the upcoming election for Proposition 1A which was on the state of California ballot for March 2000 and was a vote to legalize the illegal gambling casino the tribe (and other tribes) had been operating in California since 1994 and even earlier.

For these various projects the tribe paid Petitioner and his crew and subcontractors approximately $1,800,000 over an 8 month work period for labor/materials and profit margin.

Tribal Chairman Valencia and the business committee had an amicable relationship with Petitioner Torres and his crews with the tribal government requesting Petitioner to do the various jobs, Petitioner submitting invoices which were then reviewed and approved by the business committee and chairman and then paid.

In the late fall of 1999 current Tribal Chairman Armenta had returned to the tribe and was working in Valet Parking Department. The extended Armenta family was the largest family in the tribe of 154 members at that time.

In an effort to oust then tribal chairman Alex Valencia, Vincent Armenta, his extended family members and his tribal allies conducted a coup, forcing Chairman Valencia to resign and chairman Vince Armenta then took over as tribal chairman and some of his family were installed on the Business Committee. The mechanism used by the Armenta clan to seize control of the tribal government was to claim the contract with Petitioner was illegal under tribal law, that Petitioner's work was defective, that he overcharged the tribe for work and services performed and converted tribal property to his own and that the former chairman and business committee members were complicit in the improper contracts and payments.

Chairman Armenta then summarily terminated the contract with Petitioner sending notice to his home address where he had lived for years miles away on private property that Petitioner owned. Chairman Armenta and the "new" tribal government offered no explanation nor any showing of defective work,

overcharging or any impropriety nor did they ask Petitioner to correct any work done incorrectly. At the time the tribe still owed Petitioner for about $700,000 in outstanding invoices not yet paid and for work already completed.

When Petitioner came back to the tribal land seeking payment, return of his equipment and return of unused materials, chairman Armenta not only refused to pay Petitioner but also refused to allow Petitioner to recover his equipment and unused materials. Instead he had his relatives circulate amongst the tribe, false and libelous statements about Petitioner and his work and then instigated a Motion to Ban Petitioner from the tribal lands.

One letter circulated by one Maxine Littlejohn, a member of the extended Armenta family, asserted the tribe had already paid Petitioner well over $3,300,000 twice the amount actually paid.

Despite Petitioner's pleas to be paid, Chairman Armenta refused to pay. He then obtained a tribal resolution to ban Petitioner from the tribal lands. When a representative of FAMCO Pipe Company, one of Petitioners material suppliers, came to the tribal land to retrieve unused drainage pipe from the site that had been ordered by Petitioner but not yet paid for, Chairman Armenta told him he was going to run Petitioner out of business.

Chairman Armenta then initiated a civil lawsuit using a printed form complaint in the State superior

Court for the County of Santa Barbara alleging breach of contract and common counts to recover money from Petitioner. No amount of money was set out in the prayer.

Chairman Armenta then caused another lawsuit to be filed in the United States District Court seeking to enforce an order banning Petitioner from the tribal land and for enforcement of the ordinance by the U.S. Marshal to "remove Petitioners person from the tribal land". In that lawsuit Chairman Armenta alleged as the sole grounds for relief, that Petitioner was living on the tribal land despite the fact the tribal government knew exactly where Petitioner lived in a home he owned miles from the reservation and the tribe had sent Petitioner letters there and Petitioner never resided on tribal land.

This federal case was terminated following a decision of Judge Stephen V. Wilson of the United States District Court, Central District of California, denying the tribal Motion for Summary Judgment and ordering his decision denying that motion to be published. *Santa Ynez Band of Mission Indians v. Torres* (262 F. Supp. 2d 1038 (C.D. Cal. 2002)) and when that Summary Judgment Motion was denied the tribe (through Armenta) had the federal case voluntarily dismissed.

Chairman Armenta then had the civil lawsuit brought previously in State Court, amended to then allege additional and various causes of action for breach of contract, fraud and conversion. The tribe, (Armenta) through different attorneys amended that complaint 3 times.

Because the tribe (Armenta) had refused to pay Petitioner, a number of his subcontractors and materialmen had begun suing him and obtaining uncontested judgments for monies they were owed which then forced Petitioner to seek protection in September 2002 in a bankruptcy petition under Chapter 11 of the Bankruptcy Act filed in the Northern District bankruptcy court for Los Angeles District Court.

Chairman Armenta, again ostensibly on behalf of the tribe, filed a creditor's claim for three million dollars [$3,000,000] against Petitioner in December 2002 asserting as a basis, typed into one sentence in the body of the claim, that the tribe had to pay other contractors to do the work or to repair or re-do Petitioner's work. There were no supporting documents, invoices, canceled checks or other evidence submitted in support of the claim filed.

Subsequently Petitioner filed a State Court complaint himself for malicious prosecution and abuse of process naming the chairman and those tribal officers who had been engaging in the abusive and harassing actions including the frivolous federal court action claiming he lived on tribal lands. This suit was based on the successful dismissal of the federal court case. The tribe, again acting through Chairman Armenta, made a motion to quash that action claiming tribal sovereign immunity and that case was dismissed without any hearing on the merits. Petitioner appealed that dismissal but it was affirmed by the State Court of Appeals for the 2nd Appellate District on the grounds of "tribal sovereign immunity from suit" including the

personal misconduct of the tribal officers named as Defendants.

Petitioner then filed an objection to the unsupported $3,000,000 claim filed in his Chapter 11 case.

Petitioner took the deposition of Chairman Armenta including a subpoena to produce all records alleged to support the $3,000,000 claim. At that deposition Chairman Armenta refused to answer questions dozens of times and while being coached by his attorney, provided vague evasive and obstructive answers concerning the basis for the $3,000,000 claim he filed. Neither did Chairman Armenta bring any documents responsive to the deposition subpoena and his attorney claimed that they would only present that evidence in response to the deposition subpoena at the time of the trial of the State court civil action Armenta had filed previously and which was pending but had been enjoined by the automatic stay in bankruptcy.

Chairman Armenta made a motion to lift the stay in Bankruptcy court and Petitioner asserted to the bankruptcy court at the time of the hearing of that motion, that if the stay of the State court was lifted then the $3,000,000 claim in bankruptcy should be simultaneously determined in State Court based on Chairman Armenta's testimony at his deposition that that claim was connected to the work that Petitioner had done for the former tribal government.

The bankruptcy court ordered the stay of that State court be lifted and that the state court would simultaneously determine the merits of the unsupported $3,000,000 bankruptcy claim filed in Petitioners Chapter 11 case by Armenta, but the

bankruptcy court expressly retained jurisdiction of the bankruptcy case after judgment was entered in the State court case. Petitioner also asked that he be allowed to assert the unpaid invoices he was owed by the tribe in that same State Court action as a counterclaim or cross complaint to be recovered (not just as a "set-off) and the bankruptcy judge agreed. The order lifting the stay in October 2004 (drafted by the tribal attorneys) provided that Petitioner could raise those unpaid claims and invoices due since November 1999, concurrently in the trial of the state court case.

The entire case proceeded to trial in State Court. After the first week of trial the State Court granted Petitioner's motion for judgment of "no-suit" on the basis the tribe and chairman Armenta completely failed to present any evidence of fraud, conversion or overcharging. The remainder of the case for breach of contract and negligent performance of Petitioners work based on allegations of Chairman Armenta (ostensibly a claim of the tribe) then proceeded to trial in due course.

After another 7 weeks of trial the trial court reached a judgment that "the tribe" had failed to prove any negligence in Petitioner's work, no evidence that he had "overcharged" for his work nor any basis to recover anything from Petitioner. Based on the contract cause of action and the negligence cause of action the State trial court opined by way of dicta in its statement of decision that Chairman Armenta's civil complaint brought in State court did not necessarily establish that the tribes breach of contract was done in bad

faith.[1] The state trial court entered a judgment in June 2005 for defendant (Petitioner) and also awarded Petitioner most of the unpaid invoices in the amount of $309,000 owed Petitioner by the tribe for over 5 years and including interest on those unpaid invoices for that time amounting to a total over $500,000 dollars.

Despite the fact the State Court judgment on the merits established there was no basis at all for the $3,000,000 claim, Chairman Armenta had filed in bankruptcy, Chairman Armenta failed and refused to dismiss the claim or to pay the judgment. Instead chairman Armenta filed a notice of appeal of the state court judgment asserting the tribe had sovereign immunity from Petitioner's counter claim for the unpaid invoices which, with interest from the date due, amounted to $525,000. It was later discovered that the tribe had sent out a ballot to the entire tribal council and a vote was cast with 73 in favor 3 against to settle the case pay Petitioner the amount of the judgment and **NOT** appeal the decision.

Chairman Armenta ignored that vote and prosecuted an appeal in State Appellate court lasting at least another two years, telling a tribal council meeting in the interim that he had agreed to pay the judgment, when in fact Petitioner had to execute the judgment and involuntarily levy upon the tribes bank accounts when Armenta failed to post an Appeal bond. As a result of the appeal Petitioner was required to

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[1] None of the long pattern of harassment, abuse of process including the federal case and Armenta's own actions, personal animas and statements toward Petitioner were introduced during the contract phase of the case being tried in State court.

employ Appellate counsel and expend even more sums of money.

The court of Appeals affirmed the judgment in favor of Petitioner and agreed with the State court and bankruptcy court that the filing of the $3,000,000 claim against Debtor (Petitioner herein) constituted a waiver of tribal immunity.[2]

Notwithstanding that affirmation on appeal Chairman Armenta failed and refused to dismiss the $3,000,000 claim still pending in Petitioners Chapter 11 case requiring it to be accounted for in the amended plans for arrangement being filed and requiring Petitioner to then bring a dismissal Motion in bankruptcy formally denying the claim on the basis the state court had determined there was absolutely no basis for that claim on the merits after determining the issues raised in the underlying state court civil trial and judgment in favor of Defendant/Petitioner.

After nine grueling years of litigation and tremendous legal fees and costs in excess of $550,000 required in order to defend himself against the onslaught of Chairman Armenta's vendetta, undertaken ostensibly on behalf of the tribe and chairman Armenta's repeated assertions of immunity from prosecution for his actions under the claim of "tribal sovereign immunity" Petitioner made his motion in bankruptcy court for compensatory sanctions. Petitioner sought recovery at the least of the amount of attorney's fees and costs he had to expend which, at

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[2] *Krystal Energy Co. v. Navajo Nation*, 357 F.3d 1055 (9th Cir. 2005).

that point, were in an amount which consumed the majority of the judgment he recovered on his counter claim.[3]

The bankruptcy court denied Petitioner's motion for sanctions stating the many actions of Chairman Armenta taken against Petitioner "Did not happen in her court" and therefore there were no established grounds upon which she could award sanctions under bankruptcy law. Petitioner timely appealed that decision.

REASONS THE PETITION FOR WRIT OF CERTIORARI SHOULD BE GRANTED

The United States Bankruptcy court has the jurisdiction and authority to impose sanctions arising out of any action brought or pending in a bankruptcy case. (See *Chambers v. Nasco,* 501 U.S. 32 (1991).) (see also *In re Cabrera-Meija*, 402 B.R. 335 (Bankr. C.D. Cal. 2008). In *Chambers v. Nasco, supra*. this court held that inherent authority to sanction bad faith and dilatory actions of a creditor extends to events occurring in other courts and other venues outside of the bankruptcy case as long as there existed some nexus to the bankruptcy case. Clearly where the claimant creditor is acting in bad faith, sanctions are appropriate. [*See Caldwell v. Unified Capital Corp., (In re Rainbow Magazine, Inc.)*, 77 F.3d 278 (9th Cir. 1996).

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[3] Prior to trial of the State court action Petitioner also lost his home due to action by lenders to foreclose and force sale when Petitioner was unable to pay his mortgage because Chairman Armenta refused to pay the balance due on the remaining outstanding invoices in November 1999.

Bad faith conduct and filings are not mere negligence or recklessness but from the entire pattern of facts, malice or bad faith is evident, *In re Dyer*, 322 F.3d 1178 (9th Cir. 2003) Where the creditors behaviors are clearly intended to vex and harass the Debtor there is a showing of willful, baseless and abusive conduct and filings. See *Fink v. Gomez*, 239 F.3d 989, 992 (9th Cir. 2001).

A Debtor has a right to be free from costly and vexatious actions and litigation, *Von Poppenheim v. Portland Boxing and Wrestling Comm.*, 442 F.3d 1047, 1054 (9th Cir. 1971), and clearly the filing of a false, unsupported and fraudulent claim is both a violation of federal laws, 18 U.S.C. § 152 (4) and is clearly grounds for the imposition of sanctions *In re Varona*, 388 B.R. 705, 716 (Bankr. E.D. Va. 2008). That is particularly true in a case like this where there were numerous improper and dilatory actions in addition to the filing of the unsupported and baseless $3,000,000 claim in Petitioners bankruptcy.

The doctrine of Indian tribal sovereign immunity from all unconsented lawsuits was established in a serious of court decisions commencing around 1919 with language used in deciding *Turner v. United States* (248 U.S. 354 (1919)) and which were well intended and established to protect nascent Indian tribes and their meager assets. *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, 523 U.S. 751 (1998).

This court opined that the doctrine was essentially a legal anachronism created by a long history of court decisions. Further, that in a modern world of commerce where many Indian tribes own and operate casinos, hotels, restaurants, amusement parks, shopping malls,

marinas and a host of other large profitable businesses, open to the public, employing non-Indians and participating directly in the same chains of commerce as all other non-Indian businesses, the doctrine has probably outlived its usefulness and original purposes.

Over the years court decisions had expanded the protection of the doctrine to include tribal members, officers and officials purporting to be acting for or on behalf of the tribe, actions both on and off the reservation or Indian owned lands and even to defeat legitimate claims of injured workers and customers of those Indian businesses and those contracts made in good faith with Indian tribes as well as their businesses. This court went on to opine in *Kiowa*, that this court created doctrine of immunity should be eliminated but in the end found it was up to Congress to undo the doctrine constructed by case law through Congressional legislation. The court did opine, by way of *dicta,* that Congress should alleviate the problem created by those court decisions through legislation, for example, by amending the Foreign Sovereign Immunity Act (28 U.S.C. §§ 1602-1604) to include Indian tribes while engaged in their commerce and business activities with non-Indians.

Since that decision this court has steadfastly refused to eliminate the doctrine even in the harshest of inequitable cases of abuse occurring in many lower courts both federal and state and this court has refused to hear petitions from injured workers and patrons of Indian businesses who entered them without knowing they left their Constitutional rights as citizens of the United States at the door. That they had unknowingly given up their legal rights to be protected and recover

damages if injured, cheated or discriminated against. In the words of Justice Stevens dissenting in *Kiowa* supra ***"why should an Indian tribe have greater immunity than the United States, all foreign governments and all the several states"*** (and local governments too)!

Only recently this court has modified the scope of what had here to for been a *de facto* absolute immunity resembling more an *"impunity" of Indian tribes* and their governments from any semblance of the rule of law and the rights of over three hundred million non-Indian American Citizens. In the decision in the recent case of *Michigan v. Bay Mills Indian Community*, 572 U.S. __, 134 S.Ct. 2024 (2014) the majority of the court upheld the tribal immunity of the Bay Mills Indian tribe even though their operation of a gambling casino was on ineligible land in violation of state anti-gambling laws. In addition the land was merely owned by the tribe in fee simple in clear violation of the Indian Gaming and Regulatory Act of October 1988, I.G.R.A. 25 U.S.C. § 2703(4) requiring any lawful Indian gaming to be situated on either Indian reservation land or federal Indian trust and restricted lands. The court did find, however, that the officers, officials and tribal government officials, casino employees (even non-Indian customers) could be charged with violating state laws against gambling casinos[4] not exempted by the federal law [I.G.R.A.] presumably by being arrested. [18 U.S.C. § 1955].

This thread of change has filtered down slowly to some lower courts. See for example the recent decision

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[4] This because the I.G.R.A. only protects gaming on Indian lands.

of the Ninth Circuit in *Maxwell v. County of San Diego* [708 F.3d 1075] (9th Cir. 2013) where the Ninth Circuit found that tribal officers and employees could be sued in their individual capacities for any wrongdoing that may have occurred by them. The obvious problem in such a situation is whether the acts resulting in injury or damages to a third party non-Indian could have occurred by improper motives and behavior even though those actions may have technically fallen within the general scope of their work duties and authorities.

What often occurs, as has in the present case, the improper and illegal conduct is couched in the authority of the tribe and its businesses that are involved but then the particular behaviors involved are never the less undertaken improperly or for bad, false or malicious purposes and motives. So for, example, a police officer is authorized to make an arrest and may be immune from suit for doing so as may the agency or government he works for but may never the less be held liable if an arrest is made unlawfully for an intentional and knowingly false reasons or is done using excessive force! The power of arrest was something within the "*regular scope of the officer's authority*" but the arrest itself was illegal and improper.

In the present case the tribal chairman Vincent Armenta no doubt had apparent authority to file suit or refuse to pay an invoice acting for "the tribe". But in this case he terminated Petitioners employment contract for totally improper reasons and then conducted a nine year campaign of harassment and

abuse of legal process purporting to be acting for or on behalf of the tribe.

In 2005 in the middle of this long campaign by Chairman Armenta against Petitioner the Ninth Circuit decided the case of *Krystal Energy Company v. Navajo Nation*, 357 F.3d 1055 (9th Cir. 2005), which case held that for purposes at least of the Bankruptcy Act, sections 101 (27) and 106, an Indian tribe and tribal government was no different than any other subordinate government. Therefore if a claim was filed in bankruptcy by an Indian tribe it constituted a waiver of the Indian tribal immunity doctrine as it applied to creditors' claims against a Debtor. As a result any claim, counterclaim or cross-complaint arising out of that tribal claim, underlying contract or transaction then the Debtor could asserted any related counterclaim because of the waiver of immunity by operation of law. Furthermore any cross-complaint or counterclaim included ***all related claims arising out of the subject matter or transaction involved .***

Recently this court has refused to hear cases in which the legitimacy of the tribe and actions conducted by questionable "Indian tribes"[5] did not necessarily eliminate their right to claim immunity or obtain a dismissal of any lawsuit brought against them or brought in any related matter even if it is not a suit against the tribe but involves a matter that the tribe

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[5] The current federal process for acknowledging Indian tribes is arbitrary and capricious at best and once that status is attained the "acknowledged tribe" is invested with immunity to defeat and challenge its lawful existence and using the procedural tactics set out above can obtain dismissal under *rule 19 FRCP*.

can assert some interest in even if it is only a colorable claim. The now common procedural tactic being employed by tribes, tribal members and their lawyers, is to claim in any suite filed challenging the ***ultra vires*** acts of tribal officers, employees or any violations of laws that the officer or the tribe is required to comply with by any government agency regulating tribal business operations, then the "tribe" can claim it is nevertheless an "indispensable party" who must be joined but cannot be joined because the tribe is immune from unconsented lawsuits. This then results in a dismissal for lack of jurisdiction without ever addressing the merits of the complaint, a dismissal based on *rule 12 b FRCP* for failure to join an "indispensable party", the tribe, under *FRCP rule 19* and who cannot be joined ***because of the Indian tribal immunity doctrine***. If ever there was a legal analogy to the popular expression of a *"catch 22"* situation this has to be it.

This common legal tactic, not addressed in this courts *Bay Mills* analysis is one now being used regularly by Indian tribes and their lawyers to evade responsibility for illegal or ***ultra vires*** acts resulting from the antiquated tribal immunity doctrine superimposed over the Federal Rules of Civil Procedure. This is a *"real life issue"* issue not addressed in the overly simplistic *Bay Mills* case analysis. In effect if any state were to follow this court's advice in that case, given by way of dicta, that illegal actions of tribal officers and employees can be addressed in lawsuits against them personally and not against the tribe who has immunity, then what is to keep the individual (s) sued from seeking dismissal of the case against them on the basis **the tribe is**

indispensable to that action and the tribe is immune from suit? Thus, these individuals engaging in ***ultra vires*** acts can obtain dismissal of any action against them personally by simply claiming "the tribe is an indispensable party" under rule 19, cannot be joined requiring dismissal of any underlying case brought against them as an individual.[6]

Although the bankruptcy court agreed with Petitioner below in this case that the filing of the false and fraudulent claim constituted a waiver of sovereign immunity based on the 2005 *Krystal Energy* case, 357 F.3d 1055, *supra*, Chairman Armenta had already begun the pattern of harassment and abuses of his position as tribal chairman commencing in December 1999 evidenced by his statements in early 2000 that he was going to *"run Petitioner out of business"*.

That waiver of immunity in this case established personal liability of Chairman Armenta for his ***ultra vires*** acts undertaken under the guise and auspices of the tribe and hence providing a cloak protecting him by the tribal immunity doctrine when it should not have done so. Whether the tribe is somehow vicariously liable for the misconduct of Chairman Armenta is matter between Armenta and the tribe. (see *Maxwell v. County. of San Diego*, 708 F. 3d 1075 (9th Cir. 2013), *supra*.

It has been properly held in *Chambers v. Nasco*, [501 U.S. 32] (1991) that a pattern of ***ultra vires*** and

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[6] This was precisely the tactic used in the recent petition of the Friends of Amador County and the conditional cross-petition of Bea Crabtree and June Geary which this court refused to hear and consider.

illegal acts, and abuses of the legal processes can be the basis of a Motion for sanctions even though all or part of those actions were outside of the bankruptcy proceedings.

The present case falls squarely between the four corners of the facts and law of *Chambers v. Nasco*. 501 U.S. 32, *supra*.

The false and fraudulent character of the $3,000,000 unsupported claim filed by Chairman Armenta in December 2002 occurred 3 years prior to *Krystal Energy* and was filed after chairman Armenta had already commenced his campaign against Petitioner including false claims he made to evade payment of money due Petitioner, using the contract and work successfully accomplished by Petitioner as a tool to oust the existing tribal chairman in a ***coup*** to take control of the tribe. The false and defamatory campaign to obtain a tribal ordinance banning Petitioner from the tribal property where his equipment and materials remained, succeeded in establishing an ordinance banning Petitioner but contained no authorization given to sue Petition in the federal District Court on the absolutely frivolous claim Petitioner was living on the reservation and needed to be "evicted". Then, as set out above, defaming Petitioner to the FAMCO Pipe Supply Company, one of Petitioners materialmen and threatening to run Petitioner out of business were all evidence of the commencement of the pattern of harassment by Chairman Armenta. Then filing a false and unauthorized lawsuit in the federal District Court based on the false claim Petitioner, a non-Indian, was living on Indian reservation land was clear evidence of

abuse. That frivolous suit was decided in Petitioner's favor. Then when Petitioner brought a state court action against the tribal members involved (not the tribe) for abuse of process and malicious prosecution based on that federal lawsuit Chairman Armenta and the other individual Defendants were allowed to make a Motion to successfully quash that action without any trial or hearing on the merits and get it dismissed based on *the tribal sovereign immunity doctrine* while continuing to prosecute the pending civil lawsuit in State Court against Petitioner.

As set out above because the tribal chairman engaged in a long standing pattern of abuse of the legal process in both federal and state courts ancillary to the bankruptcy case, the bankruptcy court committed error and abused its discretion on the basis it could not find sufficient conduct warranting sanctions because much of the conduct and abuses of chairman Armenta occurred beyond the mere filing of the false and fraudulent $3,000,000 claim in bankruptcy and the bankruptcy court erroneous found she could not impose sanctions because all that conduct "did not occur in her court."

Clearly in light of the current state of the law, the court could not only have imposed sanctions for this long pattern of harassment against the tribe who had waived its immunity, but the court could have easily found that these abuses were a result of the improper personal misconduct of chairman Armenta and made an award of sanctions against him because the evidence revealed it was his dilatory and improper abuses that occurred even though ostensibly done ***"in the name of the tribe"***

Petitioner is entitled to his day in court and due process of law to permit the introduction of all the harassment, defamation and abuses of Chairman Armenta affected while hiding behind tribal legal immunity. As this court set out in *Chambers v. Nasco supra*, Petitioner had the right to present the evidence of the entire campaign of abuse in a full hearing before the bankruptcy court even though most of the events occurred in other courts and outside of the perimeters of the bankruptcy case and Petitioner had been denied relief against these individual and culpable tortfeasors in state court earlier based on tribal immunity

The failure of the courts below to find Petitioner had a right to present evidence and establish his grounds for sanctions for this pattern of conduct in addition to the false and fraudulent claim filed in bankruptcy denied Petitioner due process of law. This gross injustice cost petitioner hundreds of thousands of dollars damages in attorneys fees, loss of business, reputation, his home and ten years of his life. It should have been addressed by the bankruptcy court in the course of Petitioner's Motion for Sanctions and not limited simply to the false and fraudulent claim because the bankruptcy court found that claim was the only thing it could consider and that it was not uncommon for creditors to file false, exaggerated and 'inaccurate' claims and the rest of the abusive and illegal actions of chairman Armenta ***"did not occur in her court"***.

CONCLUSION

This court should grant Petitioners Writ of Certiorari and clarify this courts recent decision in *Michigan v. Bay Mills Indian Community*, 134 S.Ct. 2024, *supra*. In particular to what extent can a tribal officer or employee engage in outrageous and abusive actions and still be entitled to evade legal responsibility for those actions by claiming the tribe's sovereign immunity from lawsuit. Is it enough that the conduct is generally within the scope of a tribal officers duties such as the power and authority to bring a lawsuit for the tribe but then that power is used by that officer to bring malicious, frivolous and harassing lawsuits for improper reasons? What is the extent of any lawsuit available against tribal officers and employees since the *Bay Mills* Decision, *supra.* considering the rules of joinder of indispensable parties often used to obtain a dismissal on the basis that the suit brought against the tribal officer or employee is required to join the tribe which cannot be joined? Lastly Petitioner was entitled to sanctions at least personally against the tribal chairman purporting to be acting on behalf of the tribe and to be able present evidence at a full hearing that the chairman was not acting for the tribe and in some instances was acting directly contrary to tribal instructions for no other reason than to continue his vendetta against Petitioner and conceal and perpetuate the actual manner in which he used Petitioner and his contracts to seize control of the tribal government. Under the circumstance of this case a sanction for Chairman Armenta's conduct should have been assessed against him in bankruptcy because it was his false and fraudulent claim (among many other abuses) that linked the abusive behavior to the bankruptcy

case and constituted a waiver of any tribal immunity for his misconduct.

Respectfully Submitted,

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