

**Docket No. 15-36003**

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*In the*  
**United States Court of Appeals**  
*for the*  
**Ninth Circuit**

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GLENN EAGLEMAN, et al.,  
*Plaintiffs-Appellants,*

v.

ROCKY BOYS CHIPPEWA-CREE TRIBAL BUSINESS COMMITTEE  
OR COUNCIL, Richard Morsette, Chairman, et al.,  
*Defendants-Appellees.*

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*Appeal from a Decision of the United States District Court for the District of Montana (Great Falls),  
Case No. 4:14-cv-00073-BMM · Honorable Brian M. Morris*

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**APPELLANTS' SUPPLEMENTAL BRIEF ON FEDERAL QUESTION  
OF JURISDICTION UNDER 28 U.S.C. § 1331**

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**I. Does 28 U.S.C. § 1331 Supply Federal Question Jurisdiction to Review an Invocation of Tribal Sovereign Immunity Where a Tribal Court Adjudicates a Sovereign Immunity Defense Detrimental to Plaintiff?**

**A. 28 U.S.C. § 1331 Authorizes Federal Question Jurisdiction in this Case.**

1. Eaglemans filed suit for personal injuries in tribal court against tribal entities, and their employees both in their official and personal capacity. Their tribal court complaint alleged that the tribal entities had waived tribal immunity, [ER2:87] but that does not create a federal question in itself. The federal question emerged when the defendants moved to dismiss in trial court based on tribal sovereign immunity and their other issues, and their motion was granted. [ER2:40, 65] The tribal appellate court upheld the dismissal based only on an erroneous interpretation of the waiver of immunity in the housing administration entity's corporate charter. [ER2: 66, 67, 70, 71, 72] Tribal remedies were then exhausted [ER2:68] and comity satisfied. Eaglemans then filed suit in federal district court, challenging the tribe's application of sovereign immunity. Eaglemans complaint clearly raises the federal question of tribal sovereign immunity. Their complaint does not merely invoke § 1331 to establish federal subject matter jurisdiction.

2. In *Nat'l Farmers Union*, a non-Indian school district was sued in tribal court for a tort committed within the boundaries of the reservation. *National Farmers Union Insurance Companies v. Crow Tribe of Indians*, 471 U.S. 845, 847 (1985). The non-Indian filed for an injunction in a federal district court to stay a

default judgment. *Id* at 848. The Supreme Court observed that § 1331 gave a federal district court jurisdiction over claims “founded upon federal common law, as well as those of a statutory origin.” *Id* at 850. Clearly a federal common law (tribal civil jurisdiction over a non-Indian) was involved, and the plaintiff properly raised that issue in federal court. *Id* at 852 - 53.

3. In *Oklahoma Tax Comm’n*, a tribe filed for removal of a state case from state district court to federal district court based solely on asserting jurisdiction under § 1331. *Oklahoma Tax Commission v. Graham*, 489 U.S. 838, 840 (1989). The state’s complaint against the tribe contained only state law tax issues, and no federal issues. The tribe filed to remove to federal court in order to avail itself of the federal question defense of sovereign immunity. *Id*.

A case is not properly removed to federal court unless it might have been brought there originally, or as otherwise provided by law. *Id*. The presence or absence of federal question jurisdiction is guided by the well pleaded complaint rule. *Id*. There was no federal question in the tribes’ complaint to bring to the district court under § 1331. Therefore the case was improperly removed from the Oklahoma courts. *Id* at 842.

4. In *Bodi*, a tribal citizen terminated from employment by a tribal entity filed suit against the entity and others in a state court under state employment law claims and the Family Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq

(FMLA). *Bodi v. Shingle Springs Band of Miwok Indians*, 832 F.3d 1011, 1014 (9th Cir. 2016). The tribe filed to remove to federal district court and, as in *Oklahoma*, then moved to dismiss under tribal sovereign immunity. *Id* at 1014.

The appellate court's holding that a tribes' removal of a case to federal court does not waive its immunity from suit is not highly relevant here. *Id* at 1017. The relevant points are: that the underlying state employment law issues were not federal questions and so not properly before the district court. *Id* at 1023. And, that FMLA was a federal statute and so the claim was properly before the court.<sup>1</sup> *Id* at FN 16. The district court could accept the FMLA claim, but not the state law claims. Section 1331 is not a cause of action, but authority to take jurisdiction over federal causes of action.

**5. Discussion.** Unlike the non-Indian in *Nat'l Farmers Union*, the Eagleman appellants did not seek to avoid tribal jurisdiction, or like the tribes in *Bodi* and *Oklahoma*, to access a federal district court under § 1331 to avail themselves of some right not available in the first court. Eaglemans filed suit in tribal court. The Chippewa Cree tribal court had original civil jurisdiction on the personal injury lawsuit.

In Eagleman, final adjudication was had in tribal appellate court on the issue of tribal sovereign immunity, a federal question. Eaglemans' tribal remedies were

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<sup>1</sup> Concurrent FMLA jurisdiction may have created a venue issue.

exhausted upon the adverse decision of the tribal appellate court. 2 Eaglemans brought a federal question to the federal district court in their complaint, which cited § 1331 as authority [ER2:11] and alleged common law errors by the tribal trial and appellate courts regarding tribal sovereign. Eaglemans complaint was well pleaded and jurisdiction was proper in district court.

## **II. Conclusion**

Jurisdiction was proper in federal district court under § 1331 because tribal sovereign immunity is a federal question, and because Eaglemans complaint was well pleaded.

Dated: May 31, 2017

Respectfully submitted,

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<sup>2</sup> Eaglemans also took care to appeal in writing to the tribal business committee and also gave notice to the tribal attorney that they considered their tribal remedies had been exhausted.

### **CERTIFICATE OF SERVICE**

I hereby certify that on May 31, 2017, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Mark Mackin

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Attorney for Appellants