

WASHINGTON D.C.
OFFICE

Wendy Helgemo
whelgemo@bigfirelaw.com

NEBRASKA OFFICES

1404 Fort Crook Road South
Bellevue, NE 68005
531-466-8725
info@bigfirelaw.com

Sheila Corbine
601 Buffalo Trail
Winnebago, NE 68071
402-878-4383
scorbine@bigfirelaw.com



TRIBAL CLIENT ALERT

TO: TRIBAL LEADERS AND BUSINESS CLIENTS
FROM: BIG FIRE LAW & POLICY GROUP LLP
DATE: APRIL 27, 2020
RE: CARES ACT LITIGATION TRIBAL UPDATE

As tribal communities continue to grapple with the Coronavirus pandemic (“COVID-19”), three lawsuits filed by Indian tribes and tribal organizations regarding inclusion of Alaska Native Corporations (“ANCs”) in the Coronavirus Relief Fund (“CRF”) moved rapidly through the federal court system. This update will summarize the litigation, and today's win for Indian tribal governments in the United States District Court for the District of Columbia regarding ANC eligibility for funds allocated to Tribal governments under the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”).

I. THE CARES ACT

On March 27, Congress passed the CARES Act and created the CRF for state, local and tribal governments response to COVID-19. The CRF includes an \$8 billion set-aside specifically for assisting Tribal governments with unexpected expenses directly related to COVID-19. The language of the CARES Act mandated the Department of the Treasury (“Treasury”) to disburse those funds by April 26, 2020.

On April 23, Treasury confirmed that, after consulting with Interior, that ANCs should be included as tribal governments eligible to receive part of the CRF Tribal set-aside, and that disbursement would be postponed until April 28. The CARES Act defined “Indian Tribes” by incorporating the definition found in the Indian Self-Determination and Education Assistance Act (“ISDEAA”), 25 U.S.C. § 5304(e), and required Treasury to determine a distribution methodology for Tribes in consultation with the U.S. Department of the Interior (“Interior”) (collectively the “Departments”). Because of the unique nature of the ISDEAA, it includes ANCs in its definition of “Indian Tribes.”

The Departments held consultations with Tribal leaders in early April to take into consideration the current concerns of Indian Country and the best method for distributing the CARES Act funds. Tribal governments became concerned that Treasury intended to include ANCs in its distribution methodology when Treasury included ANC input information in the Treasury Tribal Certification form on April 13.

Cont'd next page



In response to the lawsuits, Treasury confirmed in an April 23 announcement that, after consulting with Interior, ANCs were "properly included" under the definition of "Indian Tribe" in the CARES Act, and would be included as Tribal governments eligible to receive part of the CRF Tribal set-aside.

II. THE LITIGATION

In response to the inclusion of ANCs in the disbursement equation, the first of three lawsuits was filed jointly by the Confederated Tribes of the Chehalis Reservation and five other Tribes and Alaska Native Villages on April 17.

On April 22, the Cheyenne River Sioux Tribe, Rosebud Sioux Tribe, and Oglala Sioux Tribe filed their suit against Treasury Secretary Steve Mnuchin. The Cheyenne River Sioux Tribe is represented by Big Fire Law and Policy Group in this matter, and the Rosebud Sioux Tribe is represented by the Native American Rights Fund's Alaska office. The Ute Tribe of the Unitah and Ouray Reservation also filed their own suit on the same day.

On April 23, the three cases were consolidated into *Confederated Tribes of the Chehalis Reservation et al. v. Mnuchin* (D.D.C. Civil Action No. 2020-1002). Oral arguments were heard from both sides at the hearing on the Plaintiffs' Motions for Temporary Restraining Order and Preliminary Injunction. In the hearing, Judge Amit Mehta indicated that he would issue his decision on April 27.

III. THE DECISION

In the Opinion, released on April 27, the Court found that ANCs did not meet the definition of Tribal governments, and the Court awarded the Tribal Plaintiffs the Preliminary Injunction against Secretary Mnuchin. The Preliminary Injunction prohibits the Treasury from distributing any funds to ANCs prior to the full and final decision of the case. In the meantime, the Court will permit all of the CARES Act funds allocated to Tribal Governments to be distributed. However, the Treasury is permitted to reserve some funds for disbursement to ANCs at the Secretary's discretion until the final decision on this case occurs.

To close Big Fire Law would like to thank the attorneys of the Native American Rights Fund's Alaska office for their invaluable contributions on Alaska Native law to the pleadings. We would also like to thank Jennifer Bear Eagle, Lead In-House Counsel for the Oglala Sioux Tribe for her collaborative efforts in this litigation.

If you have any further questions regarding these issues please contact one of the following Big Fire Attorneys:

Wendy Helgemo:	whelgemo@bigfirelaw.com
Sheila Corbine:	scorbine@bigfirelaw.com
Leonika Charging:	lcharging@bigfirelaw.com
Nicole Ducheneaux:	nducheneaux@bigfirelaw.com
Lisa DeCora:	ldecora@bigfirelaw.com

TRIBAL ADVOCACY WITH INTEGRITY