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State Supreme Court finds tribal corporations immune from lawsuits

By **JOHN K. WILEY** *The Associated Press*

SPOKANE - Commercial activities of the Confederated Tribes of the Colville Reservation are protected from lawsuits under tribal sovereign immunity, the state Supreme Court ruled today.

The ruling reverses a court of appeals decision in a racial discrimination lawsuit filed by a non-Indian against two corporations of the Eastern Washington tribe and a supervisor.

The opinion, written by Justice Richard B. Sanders, found that state laws echo federal laws granting the Colvilles' tribal corporations sovereign immunity unless there is an express waiver by the tribe or immunity is abrogated by Congress.

Tribal sovereign immunity protects tribes from suits involving both governmental and commercial activities conducted on or off a reservation. The Colvilles' reservation covers about 1.4 million acres north of the Columbia River in Okanogan and Ferry counties.

The lawsuit was brought by Christopher Wright, a non-Indian hired by the Colville Tribal Services Corp. in July 2002 as a pipe layer and equipment operator. Wright worked off-reservation on a project to construct a water line for a U.S. Navy housing development in Oak Harbor.

Wright resigned in February 2003. He sued the Colville Tribal Enterprise Corp., its wholly owned subsidiary CTSC, and his former supervisor, Don Braman, alleging race discrimination, racial harassment, hostile work environment, negligent supervision, and negligent infliction of emotional distress.

The Island County Superior Court dismissed the suit for lack of jurisdiction. That was reversed by the state Court of Appeals, which found CTEC and CTSC were not protected by tribal sovereign immunity.

The CTEC owns and manages 14 business enterprises on behalf of the tribe, including three casinos, sawmills and logging companies, stores and a credit union.

Sanders opinion was endorsed by Chief Justice Gerry L. Alexander and Justices Susan Owens and Bobbe J. Bridge. Justices Barbara A. Madsen and Mary E. Fairhurst

concurring in a separate opinion.

A dissent written by Justice Charles Johnson contends the case should be sent back to a trial court to determine facts about whether the corporations are tribal entities protected by sovereign immunity. Justices Tom Chambers and James M. Johnson signed the dissent.

But Sanders wrote their dissent fails to identify any disputed facts, so "in the absence of an actual factual dispute, this is a question of law."

Under Washington law, tribal sovereign immunity protects tribal governmental corporations.

The case is *Wright v. Colville Tribal Enter. Corp*, No. 77558-3.

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Tribal sovereignty protects businesses

State court rules worker cannot sue

[Richard Roesler](#) _Staff writer_ December 8, 2006

OLYMPIA – In what's believed to be the first ruling of its kind in Washington, the state's highest court ruled Thursday that an Indian tribe's sovereign immunity from lawsuits also shields the tribe's business ventures.

The 6-3 ruling torpedoed a racial discrimination lawsuit filed against two Colville tribal corporations by Christopher Wright, a white construction worker.

"Essentially, tribal sovereign immunity protects tribal governmental corporations owned and controlled by a tribe and created under its own tribal laws," Justice Richard Sanders wrote in the plurality opinion.

The ruling could have profound effects on nontribal members who are damaged by the actions of such a corporation, said Wright's attorney, Breean Beggs, of Spokane's Center for Justice, a public interest law firm. If a tribal corporation's truck hits someone driving on Interstate 90, he said, the ruling suggests that an injured victim couldn't sue for damages.

"The immunity is kind of traveling with any employee of one of these corporations," Beggs said.

In 2002, Wright took a construction job in Oak Harbor, working on a \$4 million contract to replace a water system at U.S. Navy housing on Whidbey Island. He was a pipe layer and equipment operator.

Wright's employer was the Colville Tribal Services Corp., one of 14 business enterprises run by the Colville Tribal Enterprise Corporation. Some 80 percent of the corporation's profits – most from gambling, forest products and construction – support tribal government services for the Confederated Tribes of the Colville Reservation.

In his lawsuit, Wright said he was harassed and abused by Native American co-workers. One spat on him repeatedly while taunting him with racial slurs, he said. Another co-worker allegedly announced that he wanted to kill whites and burn their homes.

Wright said he repeatedly complained to his boss, Don Braman. Court records show that Colville Tribal Enterprise Corp. officials called one meeting and told workers that racial epithets and harassment wouldn't be tolerated. Wright said the abuse continued.

In February 2003, after eight months on the job, he quit. Then he filed suit, alleging race discrimination, racial harassment, a hostile work environment, negligent supervision and infliction of emotional distress.

Under federal law, tribes have sovereign immunity from lawsuits. They can only be sued if Congress allows it or if the tribe consents to the lawsuit.

The goal of this longstanding legal protection, according to Supreme Court rulings, was to protect struggling tribes from being stripped of their land and assets.

Now, as gambling revenues and other tribal ventures are spinning off tribal enterprises, lawsuits across the country are testing the limits of that immunity.

The key issue in Wright's case was how closely the two Colville corporations are linked to the tribe. Beggs argued before the high court in May that it's one thing to protect a tribe but quite another to protect the for-profit corporations they create.

Attorneys for the tribe, however, said that the corporations provide critical revenue to pay for tribal government operations. If the lawsuit hurts the companies, they said, it would also hurt the tribes.

The justices sided with the tribes.

"In light of the purposes for which the tribe for which the tribe founded CTSC, and the tribe's ownership and control of its operations, there can be little doubt that it functions as an arm of the tribe," wrote Justice Barbara Madsen. "Thus, CTSC enjoys the tribe's immunity from suit."

Three justices – Charles Johnson, Jim Johnson and Tom Chambers – dissented. They wanted to send the matter back to a lower-court judge to examine how strong the link is between the corporations and the tribes.

Justice Charles Johnson also said that such immunity could backfire and hurt tribes' economic growth.

"Non-Indians will undoubtedly think long and hard before entering into business relationships with Indian corporations that are immune from suit," he wrote, quoting from a 1989 court ruling in Arizona. The court, he said, should have come up with "an ascertainable distinction" between tribes and separate corporations.

Beggs said that may not be much of a problem for tribes. It's common, he said, for

companies doing business with tribes to include a contract clause in which the tribe waives its immunity.

Beggs said his client hasn't decided whether to appeal the case to the U.S. Supreme Court