

CASE LAW ON SOVEREIGN IMMUNITY

Indian tribes, as governments, occupy a unique place in our governmental system. They are separate and independent political entities. Early Supreme Court decisions developed the nature of the legal relationship between the Indian Tribes and the United States and the unique status of tribal governments. The Supreme Court held in Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1 (1831) that Indian tribes were distinct, self-governing legal entities and in Worcester v. Georgia, 32 U.S. (6 Pet.) 515 (1832) that state laws did not apply to Indian lands. Indian tribes comprise the third sovereignty in the United States, together with the federal government and the states.

In Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978) the Supreme Court determined that suits against Indian Tribes were barred by sovereign immunity.

In North Sea Products v. Clipper Seafoods, 92 Wn.2d 236, 595 P.2d 939 (1979), the Superior Court of Whatcom County (Washington) issued a writ of garnishment on the Lummi Tribe and/or its tribal enterprise which was located off reservation. The Washington Supreme Court stated that the Tribes' sovereign immunity from suit includes immunity from garnishment actions. This case recognized in Indian tribes the same immunity from garnishment which other sovereigns possess. The general rule is that the United States and the states cannot be summoned as garnishees without statutory authorization, consent, or waiver.

As a result of tribal sovereignty and retained jurisdiction, many states do not have subject matter jurisdiction to establish and enforce child support orders. For states that can establish child support orders, many tribes will not to honor state garnishment orders. Another issue is that many tribes do not have comprehensive tribal codes to address the establishment and enforcement of child support orders.