

People ex rel Jan Lynn Owen v. Miami Nation Enterprises

California Supreme Court announces test for tribal entity immunity

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The California Supreme Court has ruled two tribal entities created by Indian tribes under tribal law to offer so-called “payday” or “cash advance” loans did not possess immunity to a lawsuit brought by the State alleging that the tribes' lending activity violated federal law. The ruling in *People ex rel Jan Lynn Owen v. Miami Nation Enterprises* announced the state high court's test for evaluating whether a tribally affiliated entity may be considered an “arm of the tribal government” such that it may benefit from the tribe's sovereign immunity.

The Court identified the following five-factors courts may consider for determining arm-of-the-tribe status:

1. The entity's method of creation,
2. Whether the tribe intended the entity to share in its immunity,
3. The entity's purpose,
4. The tribe's control over the entity, and
5. The financial relationship between the tribe and the entity.

Notably, the Court placed the burden on the tribal entity to prove, by a preponderance of the evidence, that these factors favor immunity. The Court also emphasized that a tribe's formal creation of and theoretical control over an entity are not dispositive of the immunity analysis, especially where, in practice, outsiders exercise control over, and reap the benefits of, the entity's activities.

Applying this new test to the tribal entities before it, the Court held that neither entity proved by a preponderance of the evidence that it was an “arm of the tribe” entitled to the tribe's sovereign immunity protections. Although the tribes created the entities under tribal law, made them subject to ultimate tribal control, and expressly declared that immunity attach to their operations, the Court scrutinized the entities' day-to-day functioning to determine whether the entities were in fact functioning as “arms” of the tribal government.

To the contrary, the Court found that there was “considerable evidence” that the entities “function as intermediaries to commercial enterprises that have only a minimal financial relationship with the tribes.” For instance, the Court noted that the entities' revenues were commingled with nontribal enterprises and that the tribes did not appear to exercise a significant degree of control in the entities' operations. Moreover, the Court noted that the record contained no evidence of how much of the revenue generated by the entities was actually flowing back to the tribal governments. Despite finding the entities' evidentiary showing inadequate, the Court left open the possibility that, on remand, the trial Court could afford them with an opportunity to produce additional evidence to demonstrate that their structure and operations meet the new test.

The California Supreme Court's new test will help guide Indian tribes in creating and operating tribal entities that could better withstand legal challenges under California state law. The clear message of this decision is that creation of such entities under tribal law is not, alone, enough to ensure that they will benefit from the tribe's sovereign immunity. In the wake of this ruling, tribes now have more information about what they need to do to be better prepared to structure their businesses in way that can withstand challenge, thereby better protecting the tribe's sovereign interests.

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