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ALASKA NATIVE LAW CONFERENCE

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ALASKA NATIVE CASE LAW UPDATE



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1. TRIBAL SOVEREIGNTY CASES

1.1 **Holl v. Avery, No. 3:24-cv-00273-JLR, 2025 WL 1785887 (D. Alaska June 27, 2025)**

The Alaska federal district court concluded that sovereign immunity barred a lawsuit brought by local residents against an Alaska Tribe operating a casino on an Alaska Native allotment in Anchorage.

In September 2024, the Native Village of Eklutna (NVE) began constructing a casino on an allotment near Birchwood, north of Anchorage. In December 2024, a group of property owners near the allotment filed a lawsuit against NVE and Sharon Avery, the acting chairwoman of the National Indian Gaming Commission (NIGC)—the federal agency that had approved the casino. The plaintiffs challenged NVE’s designation as a federally recognized tribe and recent decisions by the NIGC paving the way for NVE to operate a casino on the allotment.

NVE moved to dismiss the lawsuit on the grounds of sovereign immunity. The main question was whether NVE is a valid Alaska Tribe that possesses sovereign immunity, or as the plaintiffs alleged, whether NVE’s designation in 1993 as a federally recognized tribe was an *ultra vires* federal agency action. The plaintiffs argued that because NVE was not lawfully recognized as an “Indian tribe,” the allotment was not “Indian country” and therefore, approval of the casino was invalid.

On June 27, 2025, U.S. District Judge James L. Robart¹ granted NVE’s motion to dismiss the case in a two-part ruling. First, the district court concluded that NVE possessed sovereign immunity from suit because it was indeed a federally recognized tribe. The federal government’s recognition of NVE as a tribe was proper because the authority to recognize Indian tribes was delegated to the Bureau of Indian Affairs (BIA) by Congress and the President. In 1993, the BIA added NVE to a list of federally recognized tribes (the “1993 List”), which was subsequently approved by Congress pursuant to the Federally Recognized Indian Tribe List Act of 1994. The district court noted that other courts have routinely recognized tribes

¹ Following the recusal of Chief U.S. District Judge Sharon Gleason (Alaska’s only non-senior district judge), the U.S. Senior District Judge from the Western District of Washington was temporarily assigned the duties of United States District Judge for the District of Alaska for this case pursuant to 28 U.S.C. § 292(b).

included on the 1993 List as possessing sovereign immunity from suit. Accordingly, the claims against NVE were barred by sovereign immunity and NVE was dismissed as a party.

Second, the district court concluded that following NVE's dismissal as a party, the remaining claims against the NIGC (Chairwoman Avery) should also be dismissed for failure to join a required party under Federal Rules of Civil Procedure 12(b)(7) and 19. The court relied on Ninth Circuit precedent that tribes in similar circumstances are indispensable parties whose protected interests are not adequately represented by the government, even where an agency action favorable to the tribe is challenged. Thus, because sovereign immunity prevented NVE from being joined as a party, the case was dismissed.

The plaintiffs have appealed to the Ninth Circuit.

1.2 Alaska v. United States, No. 25-0330, 2025 WL 1730193 (D.D.C. June 23, 2025)

In this parallel case to *Holl v. Avery*, the State of Alaska sued the United States government in the D.C. federal district court, challenging the Native Village of Eklutna's (NVE) casino on an Alaska Native allotment in Anchorage.

The State's complaint focuses on a 2024 solicitor opinion by then-Interior Solicitor Robert T. Anderson, which clarified that Alaska Tribes are presumed to have territorial jurisdiction over Alaska Native allotments. The Anderson Opinion partially revoked an earlier solicitor opinion (the "Sansonetti Opinion"), which had found the opposite, specifically that there was "little or no basis for an Alaska village claiming territorial jurisdiction over an Alaska Native allotment."

Previous decisions by the Department of the Interior and National Indian Gaming Commission had relied on the Sansonetti Opinion to prohibit Alaska Tribes, including NVE, from operating casinos in Alaska. However, following the Anderson Opinion, the federal agencies changed course and issued a series of decisions authorizing NVE to conduct gaming on the allotment.

The State sought declaratory and injunctive relief to prohibit the federal agencies from authorizing NVE’s casino. NVE intervened in the case as a defendant.

On June 23, 2025, the D.C. federal district court granted NVE’s motion to transfer the case to the Alaska federal district court. The D.C. court rejected the State’s arguments that transferring the case would risk dismissal under Ninth Circuit precedent, following the same outcome as in *Holl*. According to the D.C. court, “[a]llowing a party to avoid unfavorable circuit precedent by filing suit in a district outside of the circuit and then arguing that the case could not have been brought in a district within the circuit because of unfavorable precedent would likely promote forum shopping.”

On September 4, 2025, the Alaska federal district court stayed the case until the Ninth Circuit decides the pending *Holl* appeal.

1.3 Native Village of Unalakleet v. U.S. Department of Agriculture, Rural Utilities Service, No. 3:24-cv-00100-MMS-SLG (D. Alaska Dec. 17, 2024)

The Alaska federal district court denied a motion for preliminary injunction sought by two Alaska Tribes in connection with a federal grant for rural utilities.

The U.S. Department of Agriculture, Rural Utilities Service (RUS) administers the Rural eConnectivity Loan and Grant Program, which provides federal funding for fiber and high-speed internet infrastructure in certain underserved rural areas. Under the grant regulations, if the project is proposed on “tribal land,” the application must submit a “certification from the proper tribal official that they are in support of the project and will allow the construction to take place on tribal land.”

In 2024, the Native Village of Unalakleet and the Native Village of Elim sued RUS in the Alaska federal district court, alleging that a grant award to two rural Alaska utilities—Interior Telephone Company and Mukluk Telephone Company—for a project in the Nome region was unlawful because the utilities had not received the Village’s approval. Instead, the utilities had submitted a statement of support from Kawerak, Inc., the nonprofit tribal consortium serving the Alaska Native populations of the Nome region. The utilities intervened as defendants.

The main issue at the preliminary injunction stage was whether the tribal approval requirement for projects on “tribal land” applied in Alaska. The Villages argued that the regulation should be interpreted broadly, otherwise it would only apply to Alaska’s sole reservation, the Metlakatla Indian Community. RUS argued that “tribal land” should be interpreted narrowly as “Indian country,” which is land held in trust by the United States for tribes. Because the Alaska Native Claims Settlement Act (ANCSA) revoked existing tribal reservations in Alaska, the Villages do not occupy “Indian country.”

On December 17, 2024, Chief U.S. Magistrate Judge Matthew M. Scoble rejected RUS’s preferred interpretation of “tribal land,” concluding that the Villages were likely to prevail on the merits of their claims. The court reasoned that ANCSA did not “extinguish the existence of native village corporations or tribes broadly as legal entities” and RUS was “arbitrary by applying a standard that was inapplicable to the Alaskan people that Congress had directed it to serve.” The court concluded that the Villages “occupy tribal land and are tribal governments,” and their consent for the grant award was required.

Although the court agreed with the Villages, it declined to enter an injunction because that preliminary relief would not have undone the harm already incurred by the Villages.

The court concluded its order within an important caveat:

This order should be read with caution. It should not be read as a contradiction of the case law surrounding ANCSA or Indian country generally. Instead, it recognizes that village corporations and tribes in Alaska remain as legal entities, and to the extent that federal regulations give credit to them beyond the aboriginal titles that have been extinguished by ANCSA, it is arbitrary to then set such consideration aside.

The Villages subsequently moved for summary judgment. The motion has been fully briefed and is scheduled for oral argument before Chief District Judge Sharon Gleason on October 9, 2025.

1.4 State of Alaska v. Newland, No. 24-5280 (9th Cir. Sept. 25, 2025)

The Ninth Circuit denied an Alaska Tribe's motion to dismiss the State of Alaska's appeal of a district court order remanding to the Department of the Interior the matter of whether the federal government may take tribal land in Juneau into trust.

On June 26, 2024, the Alaska federal district court vacated and remanded a decision by the U.S. Department of the Interior to place a 787-square-foot parcel of land in Juneau into trust on behalf of the Central Council of Tlingit & Haida Indian Tribes of Alaska. *State of Alaska v. Newland*, 2024 WL 3178000 (D. Alaska June 26, 2024). Although the district court concluded that the federal government has legal authority to take lands into trust in Alaska, the district court remanded the Tribes' application to the Department of the Interior for further consideration of whether the Tribes' request for the Juneau parcel was for a proper purpose and whether the Tribes satisfied the statutory requirements for submitting lands into trust.

The State appealed the threshold legal decision upholding the federal government's authority to take lands into trust in Alaska, and the Tribes appealed the remand order.

On appeal, the Tribes voluntarily dismissed their appeal of the remand order and moved to dismiss the State's cross-appeal based on the finality doctrine. The Tribes argued that because the Department of the Interior had not issued a decision on remand, the State's appeal was from a non-final order.

On September 25, 2025, the Ninth Circuit denied the Tribes' motion without prejudice. The court's order noted that the Tribes could renew their jurisdictional arguments in their merits brief, which is due by October 27, 2025.

2. LANDS CASES

2.1 Center for Biological Diversity v. Bureau of Land Management, 141 F.4th 976 (9th Cir. 2025)

The Ninth Circuit affirmed in part and reversed in part a 2023 decision by the Alaska federal district court granting summary judgment to two groups

of plaintiffs challenging the ConocoPhillips Willow Project in the National Petroleum Reserve—Alaska (NPR-A).

The question in this case was whether the federal agencies complied with statutory procedural requirements prior to issuing certain permits to ConocoPhillips for the production and transport of oil and gas from leases in the NPR-A. The plaintiffs alleged that the federal agencies violated the National Environmental Policy Act (NEPA), the National Petroleum Reserves Act, the Alaska National Interest Lands Conservation Act (ANILCA), and the Endangered Species Act.

The Ninth Circuit addressed five issues that had been raised by the plaintiffs at the summary judgment stage in the district court. First, the Ninth Circuit concluded that the federal agencies' decision to adopt a project alternative that did not comply with the previous project standards was arbitrary and capricious. The Ninth Circuit reiterated case law establishing that when an agency changes their position on an issue, the agency must explain their reasoning and produce a record of the process of how the change was implemented.

Second, the Ninth Circuit affirmed the district court's order granting summary judgment to the federal agencies on the plaintiffs' NEPA claims. The Ninth Circuit concluded that the federal agencies adequately considered the effects of downstream greenhouse gases when deciding to issue the permits. NEPA requires adequate consideration of issues, nothing more.

Third, the Ninth Circuit determined that the federal agencies did not violate the National Petroleum Reserves Act. Although there were other alternatives that would have mitigated the project's negative effects on surface resources within the NPR-A, the mitigation mandate was discretionary and the federal agencies had not acted arbitrary and capriciously by implementing conditions on exploration within the NPR-A.

Fourth, the Ninth Circuit affirmed summary judgment to the federal agencies on the plaintiffs' ANILCA claims. The plaintiffs argued that the federal agencies violated Title VIII of ANILCA by failing to consider the project's effects on subsistence users. However, the Ninth Circuit concluded that the federal agencies followed the procedures in Section 810 of ANILCA and that ANILCA does not prohibit all federal land use actions

that may adversely affect subsistence users, as long as the agencies comply with the procedural requirements for consideration of those effects.

Fifth, and finally, the Ninth Circuit affirmed summary judgment to the federal agencies on the plaintiff's Endangered Species Act claims. Although the federal agencies had concluded that the project was likely to affect polar bears and other listed species, the federal agencies rationally explained their decision that there was not likely to be jeopardy to those species.

Thus, the Ninth Circuit remanded with directions that the federal agencies produce a record and explain their rationale for deviating from the previously adopted project standards, but the project's approval was not vacated.

2.2 Orutsaramuit Native Council v. U.S. Army Corps of Engineers, 751 F. Supp. 3d 917 (D. Alaska 2024), order on remedy, 2025 WL 1654878 (D. Alaska June 10, 2025)

On September 30, 2024, the Alaska federal district court granted declaratory judgment to a group of Alaska Tribes challenging the federal government's approval of the Donlin Gold project—a proposed open pit gold mine 10 miles north of Crooked Creek Village, within the Kuskokwim River watershed. 751 F. Supp. 3d 917.

The district court concluded that U.S. Army Corps of Engineers and Bureau of Land Management violated the National Environmental Policy Act (NEPA) and Section 810 of the Alaska National Interest Lands Conservation Act (ANILCA) by failing to consider the potential of a larger tailings spill at the mine. The spill scenario that the agencies considered during the NEPA process represented just 0.5% of the proposed tailings storage facility's capacity, ignoring the reasonably foreseeable event of a larger spill that could have catastrophic consequences for downstream ecosystems. And "[b]ecause the Court finds that the Corps should have considered a larger tailings spill as a reasonably foreseeable effect of the mine, pursuant to Section 810 [of ANILCA], BLM also should have assessed a larger tailings spill" in its analysis of the mine's potential effects on subsistence use and needs.

On June 10, 2025, after supplemental briefing on the appropriate remedy for the NEPA and ANILCA violations, the district court ordered the Army

Corps and BLM to supplement their analysis of the proposed mine to include the effects of a larger tailings spill, although the court did not vacate the underlying permit decisions.

2.3 Village of Dot Lake v. U.S. Army Corps of Engineers, 2025 WL 2173454 (D. Alaska Jul. 31, 2025)

The Alaska federal district court dismissed an Alaska Tribe’s breach of trust claim arising from the U.S. Army Corps of Engineers’ failure to consult with the Tribe prior to issuing a federal Clean Water Act permit.

In July 2024, the Village of Dot Lake—an Alaska Tribe—filed a lawsuit challenging approval of the Manh Choh Mine—an open pit gold mine approximately 10 miles south of Tok. The Tribe alleged that the Army Corps violated the National Environmental Policy Act (NEPA) and Administrative Procedure Act by failing to properly analyze the impacts of the mining project. The Tribe also raised a breach of trust claim arising from the Army Corp’s failure to consult with the Tribe prior to issuing the permit, as required by federal orders and policies. The mine operator, Peak Gold, LLC, intervened and moved to dismiss the Tribe’s complaint.

On July 31, 2025, Chief U.S. District Judge Sharon Gleason granted Peak Gold’s motion to dismiss, in part. First, as a procedural matter, the district court concluded that an intervenor-defendant may properly move for dismissal of claims raised by the plaintiff against the federal defendants.

Second, on the merits, the district court determined that the Tribe could not establish a breach of trust claim resulting from the Army Corps’ failure to consult with the Tribe. Although the requirement for consultation is well-established in federal policy, express language in the January 26, 2021 President Memorandum (“Tribal Consultation and Strengthening Nation-to-Nation Relationships”) and Executive Order 13175, which require tribal consultation by federal agencies, as well as the Army Corps’ Tribal Consultation Policy, disclaimed the creation of any substantive rights. The district court emphasized the U.S. Supreme Court’s recent decision in *Arizona v. Navajo Nation*, 559 U.S. 555, 568 (2023), noting that federal trust obligations are created only where the text of a “treaty, statute, or regulation impos[es] certain duties on the United States.” Here, even if the Army Corps failed to consult with the Tribe as alleged, the policies relied on by the Tribe could not establish a cause of action for breach of trust.

Although the Tribe’s breach of trust claim was dismissed, the NEPA claims remain pending.

3. HUNTING AND FISHING CASES

3.1 **United States v. Alaska, ---F.4th---, 2025 WL 2406531 (9th Cir. Aug. 20, 2025)**

The Ninth Circuit upheld the long-established *Katie John* decisions, confirming the federal subsistence fishing priority in certain navigable waters in Alaska.

In May 2022, the federal government sued the State of Alaska to enjoin enforcement of State emergency orders purporting to open subsistence salmon fishing on the Kuskokwim River to “All Alaskans.” The State’s orders conflicted with federal orders issued under Title VIII of the Alaska National Interest Lands Conservation Act (“ANILCA”), which closed parts of the Kuskokwim River to salmon fishing except for qualified federal subsistence users.

Four groups of Alaska Native entities intervened as plaintiffs in support of the federal government: Ahtna Tene Nene and Ahtna, Inc., Kuskokwim River Inter-Tribal Fish Commission, Association of Village Council Presidents, and the Alaska Federation of Natives.

On March 29, 2024, the Alaska federal district court granted the United States and Intervenor’s motions for summary judgment, enjoining the State from enforcing its emergency orders. 2024 WL 1348632. The district court determined that under Title VIII of ANILCA, the portions of the Kuskokwim River at issue were “public lands” based on the Ninth Circuit’s *Katie John* precedent, and thus the federal orders preempted the conflicting State orders.

On appeal, the Ninth Circuit rejected the State’s argument that *Sturgeon II* overruled the *Katie John* Trilogy. The Ninth Circuit reasoned that although *Sturgeon II* held that “public lands” does not include navigable waters under Section 103(c) of ANILCA, the meaning of “public lands” under Title VIII must be construed more broadly to effectuate Congress’s intent to protect subsistence fishing—as traditionally practiced in navigable waters. The

Ninth Circuit recognized the fact that most subsistence fishing has historically taken place on navigable waters.

The Court also noted that Congress ratified the *Katie John* Trilogy’s interpretation of “public lands” through the 1998 and 1999 Appropriations Acts, which explicitly recognized the holding in *Katie John I* and appropriated funds to implement the rural subsistence priority in ANILCA as interpreted in *Katie John*. Thus, the Ninth Circuit held that *Katie John* and *Sturgeon II* could be “reasonably harmonized on the ground that the distinct context and statutory objective of Title VIII call for an interpretation of ‘public lands’ that includes navigable waters.”

On September 15, 2025, the State filed a petition for certiorari, requesting that the U.S. Supreme Court review the Ninth Circuit’s decision. The State’s petition remains pending.

3.2 Alaska Department of Fish & Game v. Federal Subsistence Board, 139 F.4th 773 (9th Cir. 2025)

The Ninth Circuit affirmed the Alaska federal district court’s conclusion that the Federal Subsistence Board (“FSB”) has authority under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) to open emergency federal subsistence hunts.

This case arose when the FSB authorized an emergency subsistence hunt for the Organized Village of Kake during the COVID-19 pandemic to address food security concerns in the remote community of southeast Alaska. The State of Alaska filed suit, arguing that the FSB lacked authority to open hunting seasons and that the FSB had improperly delegated management of the hunt to the Village.

In 2023, the district court concluded that the FSB had authority under ANILCA to authorize the emergency hunt for the Village, and also that ANILCA authorized the FSB to delegate that authority to local federal land managers, and sub-delegate to the Village to select hunters and distribute the harvest.

On appeal, the Ninth Circuit first considered the State’s interpretation of Section 811(a) of ANILCA, which requires the FSB to “ensure that rural residents engaged in subsistence uses shall have reasonable access to

subsistence resources on the public lands.” The court rejected the State’s argument that this provision guarantees only “physical access,” holding that the FSB’s decision to authorize the emergency hunt was in line with its statutory mandate to ensure access to subsistence resources on federal land for Village residents. The court bolstered its conclusion with reference to contingent amendments to ANILCA in 1997 and 1999, finding “that Congress was aware of the existing federal regulatory scheme that allowed the Board to ‘open’ hunting season . . . and that Congress twice left the regulatory scheme in place.”

The Ninth Circuit then turned to the State’s arguments that the FSB improperly delegated authority over the hunts. The court explained that it had already determined that the State forfeited that claim by failing to challenge the district court’s determination that the claim was moot in a prior appeal in this case. *See* 62 F.4th 1177 (9th Cir. 2023).

3.3 Association of Village Council Presidents v. National Marine Fisheries Service, No. 3:23-cv-00074-SLG, 2025 WL 776638 (D. Alaska Mar. 11, 2025)

The Alaska federal district court concluded that the National Marine Fisheries Service (NMFS) did not violate the National Environmental Policy Act (NEPA) when the agency determined not to supplement its 2007 Harvest Specifications Environmental Impact Statement (EIS) for the Bering Sea and Aleutian Islands groundfish fishery. Although the district court held that a coalition of Alaska Native entities and communities had standing to sue NMFS, the court deferred to NMFS’s agency expertise and denied the plaintiffs’ motion for summary judgment, instead granting the defendants’ cross-motion for summary judgment and dismissing the case.

The case arose in the context of a long-running controversy regarding western Alaska fisheries policy. Between 2014 and 2021, the Bering Sea experienced an unprecedented warming event, resulting in significant shifts in the marine food chain and the metabolic needs of fish species. In short, fish “needed greater energy, but had reduced access to their usual food source.” One consequence of the extended warm period was a decline in Chinook, chum, and coho salmon stocks.

In November 2022, NMFS concluded that the extended warm phase in the Bering Sea had ended. In 2023, NMFS published the Final Harvest

Specifications for Groundfish for the 2023-2024 season, as well as a Supplementary Information Report (“SIR”), which concluded that NMFS did not need to prepare a supplemental EIS for the fishery because there were not sufficiently new or significant circumstances or environmental changes to warrant doing so and the 2023-2024 harvest specifications would “result in environmental, social, and economic impacts within the scope of those analyzed and disclosed” in the 2007 EIS.

The Association of Village Council Presidents (AVCP) and Tanana Chiefs Conference (TCC) sued NMFS, asserting violations of NEPA and the Administrative Procedure Act (APA). The City of Bethel later joined as an intervenor-plaintiff.

The plaintiffs argued that the harvest specifications adopted by NMFS compromised their members’ and communities’ ability to adequately access marine resources, including salmon, for subsistence and cultural purposes. During the pendency of the suit, NMFS published Final Harvest Specifications for the 2024-2025 season, and the plaintiffs filed a supplemental complaint, arguing that the new specifications suffered from the same defects as the 2023-2024 specifications.

The plaintiffs sought declaratory and injunctive relief, requesting that the court conclude that NMFS acted arbitrarily, capriciously, and not in accordance with NEPA by adopting the harvest specifications for both the 2023-2024 and 2024-2025 seasons and relying on outdated EISs. The plaintiffs also sought vacatur of the harvest specifications for both seasons and an order for NMFS to prepare a new or supplemental EIS.

The district court first held that the plaintiffs had standing. NMFS had argued that the plaintiffs did not meet the causation and redressability requirements for Article III standing because climate change was an intervening cause of their injury and granting the relief requested would result in minimal increases to the number of salmon available for subsistence harvest. In rejecting that theory, the court concluded that the plaintiffs had standing because they had an identifiable injury in the form of depletion of marine resources, which was fairly traceable to NMFS’s actions—the “harvest specifications set the total allowable catch of groundfish, which affects bycatch, which in turn affects the number of salmon that return to western Alaska rivers to spawn.” The court found it likely that bycatch and climate change collectively contributed to declining

salmon numbers. The court further concluded that were NMFS to adopt different harvest specifications, it could result in a more favorable management framework for the plaintiffs.

However, the district court ultimately concluded that NMFS had not violated the APA or NEPA in adopting the harvest specifications for the 2023-2025 seasons. The court determined that NMFS “reasonably concluded that the scope of the 2007 EIS adopted a strategy for the preparation of the annual harvest specifications that applied to the 2023-24 and 2024-25 harvest specification decisions.” Next, the court concluded that the agency’s determination that a new EIS was not necessary did not violate NEPA for two reasons. First, NMFS adequately considered in the 2023-2024 and 2024-2025 SIRs whether conditions in the marine environment were significantly different than they were in 2007. Because NEPA requires only that the agency consider this information and articulate a reasonable conclusion for why supplementation is not necessary, the court concluded that NMFS’s harvest specification decisions were not arbitrary and capricious.

Second, the court deferred to NMFS’s factual determination that changes to the marine ecosystem resulting from the extended warm phase did not require a new or supplemental EIS. The court concluded that NMFS was better suited to make this factual determination, and therefore, the court rejected the plaintiffs’ challenge.

4. CORPORATE GOVERNANCE CASES

4.1 Caster v. Klukwan, Inc., No. 3AN-24-10201CI (Alaska Super. Ct. Sept. 11, 2025)

The Anchorage superior court granted an Alaska Native Village Corporation’s motion to dismiss a shareholder derivative action based on the statute of limitations and the shareholder’s failure to provide reasonable notice of the claims to the board.

Leanna M. Caster, a Klukwan, Inc. shareholder, filed a derivative action against Klukwan and its president, Rosemarie Hotch, alleging breaches of fiduciary obligations and contending that Hotch illegally exercised unilateral control over the corporation. Specifically, Caster alleged that the Klukwan Board of Directors improperly moved the corporate office from

Haines to Anchorage, unreasonably paid Hotch for accounting services, impermissibly required shareholders to submit request forms and confidentiality agreements before inspecting corporate records, and illegally reduced the quorum requirement for voting.

Caster filed her derivative suit only one day after mailing a demand to the Board regarding the alleged violations, as required by Alaska Rule of Civil Procedure 23.1 and AS 10.06.435(c). Klukwan moved to dismiss the action, arguing that Caster failed to state a claim upon which relief could be granted because she failed to comply with statutory notice and demand requirements, the actions that she complained of were protected by the business judgment rule, and the remaining allegations were barred by the applicable statute of limitations.

The Anchorage superior court granted Klukwan's motion and dismissed the case under Civil Rule 12(b)(6), concluding that Caster failed to provide the corporation with meaningful notice by filing suit the day after mailing her demand, failed to allege corporate injury that fell outside the scope of the business judgment rule, and failed to bring claims within the three-year statute of limitations applicable to shareholder derivative actions.

First, the superior court held that although neither AS 10.06.435(c) nor Civil Rule 23.1 impose a specific timeframe in which a shareholder may file a derivative action after serving the corporation with a demand, the one-day notice Caster gave Klukwan was insufficient to meet the "reasonable notice" requirement, relying on the Alaska Supreme Court's decision in *Jerue v. Millett*, 66 P.3d 736 (Alaska 2003). The court stressed that a corporate board cannot meaningfully evaluate and act on a shareholder demand within the course of a single day, and thus, filing suit immediately after serving a corporation with a demand undermines basic principles of corporate governance.

Second, the superior court held that many of Caster's allegations amounted to differences of opinion regarding how the corporation should be run, rather than actionable claims. The court emphasized that Caster failed to allege specific duties that the Board or Hotch had breached or how the disputed actions harmed the corporation.

Finally, the superior court held that dismissal was proper because Caster's remaining claims concerned conduct that occurred well outside the

limitations period applicable to shareholder derivative claims. The court explained that derivative suits are subject to the same statute of limitations that applies to contract claims because the relationship between shareholders and a corporation is contractual in nature, citing *Hanson v. Kake Tribal Corp.*, 939 P.2d 1420 (Alaska 1997). Although Caster argued that many of the wrongs she alleged were ongoing, and thus, should not have been time-barred, the court concluded that Caster had inquiry notice of the alleged wrongdoings by September 2015 at the latest.

Caster has moved for reconsideration, which remains pending.

4.2 Hanna v. Koman Holdings, LLC, No. 2:23-cv-3439, 2024 WL 4069067 (S.D. Ohio Sept. 5, 2024)

An employee, Erin Hannah, sued her former employer, a limited liability company that was a wholly owned subsidiary of Natives of Kodiak, Inc., an Alaska Native Urban Corporation in Kodiak.

The employee alleged that she suffered health issues and sought medial treatment, which required absences from her work. She was eventually terminated, and sued her former employer in the federal district court for the Southern District of Ohio, raising claims including violations of the Americans with Disabilities Act (ADA).

The employer sought dismissal of the ADA claims on grounds that Alaska Native Corporations formed under the Alaska Native Claims Settlement Act (ANCSA) are not “covered employers” under the ADA. Noting the relatively limited precedent on this issue, the Ohio federal district court concluded that Title I of the ADA did not exempt Alaska Native Corporations from the ADA’s definition of covered employers. Although ANCSA specifically exempted Alaska Native Corporations from Title VII of the Civil Rights Act to allow for a Native preference in hiring, the language of that exemption was narrow and did not apply to Title I of the ADA. Accordingly, absent an explicit exemption, Alaska Native Corporations, including the employer, remained subject to the ADA. The motion to dismiss the ADA claim was denied.

5. ICWA CASES

5.1 **Betsy F. v. State of Alaska, Department of Family & Community Services, Office of Children’s Services, ---P.3d---, No. S-19245, 2025 WL 2738877 (Alaska Sept. 26 2025)**

The Alaska Supreme Court concluded that the Indian Child Welfare Act (ICWA) does not require the Office of Children’s Services (OCS) to demonstrate active efforts to facilitate placement of an Indian child with an extended family member.

In August 2020, Betsy F. gave birth to a son, Albert, who qualified as an Indian child under ICWA. Because Betsy tested positive for opioids within 24 hours after giving birth, Albert was almost immediately identified by OCS as a child in need of aid and placed in emergency custody with a non-relative foster parent.

In January 2023, Betsy requested that OCS allow Albert to be placed with Betsy’s grandmother (Albert’s great-grandmother). OCS denied the request after meeting with the grandmother, concluding that a “large number of items stacked in the home presented a safety danger for Albert.” The grandmother requested that the superior court hold a hearing, contending that Albert should be placed with a relative to learn about his culture and family history.

During a placement review hearing held over several days in 2023 and 2024, OCS defended its decision not to place Albert with the grandmother, explaining that in addition to the home safety issues associated with an excessive amount of clutter, OCS had concerns regarding the grandmother’s decision-making and judgment in connection with a previous child neglect case involving Betsy’s first child.

The Fairbanks superior court, applying Alaska’s state child in need of aid requirements for OCS to provide reasonable efforts for child placement (AS 47.10.086) concluded that the grandmother was an unsuitable placement and that OCS was not required to provide reasonable efforts to make her home safe “because she was not Albert’s parent or guardian.”

The grandmother appealed, arguing that the superior court erred by not requiring OCS to demonstrate “active efforts” under ICWA, rather than “reasonable efforts” under the state statute, before denying her placement request.

The Alaska Supreme Court affirmed the superior court’s decision. As an initial matter, the Court concluded that the issue of whether OCS was required to demonstrate active efforts had not been adequately raised below. Thus, because the issue was raised first on appeal, the Court applied plain error review.

On the question of first impression of whether ICWA required active efforts toward a non-parent family member, the Court concluded that it does not. Examining the text of ICWA, the Court explained that “Congress was particularly concerned with the permanent removal of Indian children from the custody of a parent or Indian custodian” and “the Indian family referenced in [25 U.S.C. § 1912(d)]’s active efforts requirement does not include extended family members who are not Indian custodians.”

**5.2 Native Village of Saint Michael v. State of Alaska,
Department of Family & Community Services,
Office of Children’s Services, 572 P.3d 546 (Alaska 2025)**

The Alaska Supreme Court affirmed a superior court ruling that the Interstate Compact for the Placement of Children (ICPC) does not apply when the Office of Children’s Services (OCS) releases a child to a parent who was temporarily present in Alaska, even if that parent planned to transport the child to a different state.

In 2019, OCS took emergency custody of two Indian children in Nome, initiating child in need of aid (CINA) proceedings. The Native Village of Saint Michael intervened in the CINA proceedings as the children’s tribe. The children remained in OCS custody for several years.

In October 2023, OCS recommended reunification of the children with either of their parents, who had “made substantial progress in mitigating the safety threats that caused removal” of the children from their care. OCS noted that the father had completed everything that he was required to do for his case plan and that OCS had no concerns regarding placement of the children in his custody.

However, because the father lived in a different state, OCS initially believed that placement with the father would require approval through the ICPC. The State submitted a request under the ICPC to the father's domicile state, but that state denied the request based on "difficulties meeting and communicating" with the father. OCS explained that it planned to release the children to their father's custody while the father was temporarily in Alaska despite the lack of ICPC approval. OCS filed a motion to release the children and close the case.

St. Michael opposed the children's release to their father's custody, arguing that ICPC requirements must be met first and that one of the children's guardians had concerns about whether the father was a suitable placement. St. Michael requested that an attorney be appointed for the child.

The Nome superior court held a contested hearing on OCS's motion to release the children to their father. Ultimately, the superior court concluded that the ICPC did not apply because OCS was not transferring jurisdiction of the case to another state and OCS's recommendations for reunification with their father was in the best interests of the children. St. Michael appealed.

The Alaska Supreme Court affirmed. As an initial matter, the Court concluded that although the issue was moot, the possibility that similar circumstances could arise again warranted review under the public interest exception.

On the merits, the court agreed with OCS that the ICPC is triggered only when a child is placed outside of Alaska in an ongoing placement arrangement, but not when a "release of custody marks the end of OCS's involvement." Thus, "the requirements of the ICPC do not apply even if the parent plans to subsequently depart Alaska with the child." The superior court's order releasing the children and closing the case was affirmed.

5.3 O'Brien v. Delaplain, 556 P.3d 1170 (Alaska 2025)

In affirming a superior court's child custody decision in an Indian Child Welfare Act (ICWA) case, the Alaska Supreme Court clarified the qualification requirements for expert witnesses in ICWA proceedings.

The case concerned Ben, an Indian child under ICWA. In 2016, Ben's mother sent him to stay with his uncle, Francis, in Canada. The mother eventually moved to Oregon, leaving Ben with Francis in Canada. The mother also assigned guardianship of Ben to Francis and his wife, granting them all rights and obligations as Ben's parents, including responsibility for Ben's medical care, education, and general welfare.

In November 2019, Francis filed a motion for sole custody of Ben (and Ben's sister) in the Supreme Court of the Northwest Territories. However, the Canadian court declined jurisdiction over Ben because of his connections to Alaska.

Between February and August 2021, custody proceedings regarding Ben were held in the Juneau superior court, including testimony from 18 witnesses, *in camera* interviews with Ben and his sister, and expert witness testimony from Kluane Adamek and Jaime Browning.

In September 2021, the superior court granted Francis legal and physical custody of Ben and his sister, finding that clear and convincing evidence demonstrated that it would be in Ben's best interest to remain with Francis. The superior court also addressed ICWA's requirements and found that clear and convincing evidence, supported by expert witness testimony, demonstrated that returning Ben to his mother's custody would result in serious emotional damage to Ben. The superior court also concluded that Francis made active efforts to unify Ben with his mother. The mother appealed.

On appeal, the Alaska Supreme Court affirmed. First, the Court concluded that the superior court properly awarded custody of Ben and his sister to Francis. Under Alaska law, when a non-parent relative seeks custody of a child, the non-parent relative must show either that the parent is unfit or that the welfare of the child requires custody with the non-parent relative. *See Evans v. McTaggart*, 88 P.3d 1078 (Alaska 2004). Here, the superior court properly concluded that there was clear and convincing evidence that Ben would suffer a detriment if placed in his mother's custody and that it was in Ben's best interest to remain with Francis.

Second, the Court upheld the superior court's application of ICWA in this case, concluding that it was correct to determine that awarding custody of

Ben to Francis constituted a “foster care placement” under ICWA, and that the placement was supported by qualified expert witness testimony.

Although the mother argued that the experts who testified lacked the necessary experience and training, the Court concluded that both witnesses were qualified experts. The Court recognized Ms. Adamek’s extensive qualifications to discuss Tlingit history and cultural practices, noting that she was one of ten regional chiefs in the Canadian Assembly of First Nations; she was a prior trustee of the Kluane Nation Trust, and founder of a northern indigenous emerging leaders group; she led the planning of a Tlingit, Tahltan, and Kaska youth gathering focused on emotional support; and she had many cultural connections with the Coastal Tlingit tribe in Southeast Alaska.

The Court also concluded that Ms. Browning was properly qualified as an ICWA expert witness. Ms. Browning’s qualifications went beyond those of a “normal social worker;” she held a master’s degree in social work and a license in forensic social work; she had five years of experience in child protection including working as an ICWA family services supervisor; she had worked with children in residential treatment; and she had previously been recognized as an expert witness in other ICWA cases. Ms. Browning’s experience, training, and education met the stringent ICWA expert witness requirements, and therefore, it was not error for the superior court to rely on her testimony.

Thus, the Court affirmed Ben’s custody order.

5.4 In re Macon J., 565 P.3d 215 (Alaska 2025)

The Alaska Supreme Court affirmed the appointment of a guardian for an Indian child, reiterating that the guardianship proceedings are not the functional equivalent of termination of parental rights, and concluding that it was not necessary for all of the evidence from a parallel child in need of aid (CINA) proceeding to be considered when appointing the guardian.

In 2019, the Office of Children’s Services (OCS) took custody of Macon, an Indian child, and placed him with his mother’s first cousin, Kara, a tribal member and guardian of Macon’s half-siblings. At the time, Macon’s father lived out of state. When OCS contacted the father’s domicile state regarding

Macon's placement, that state recommended against placement of Macon with his father.

In 2022, Kara petitioned the Ketchikan superior court for appointment as Macon's guardian. The father opposed, arguing that the appointment of a guardian would effectively circumvent the requirements for termination of parental rights under the CINA statutes and that the guardianship petition should be consolidated with the CINA proceedings. The superior court granted Kara's petition, appointing her as guardian. The father appealed.

The Alaska Supreme Court affirmed the guardianship appointment, concluding that the superior court made appropriate factual findings necessary for appointment of a guardian of an Indian child under ICWA. The Court noted that "a guardianship proceeding is a 'foster care placement' under ICWA," and that guardianship is not a de facto determination of parental rights. Here, there was evidence that the best interest of Macon was to have Kara appointed as his guardian.

The Court also concluded that the superior court was not required to consider all the evidence from the separate CINA proceeding when deciding Kara's guardianship petition. Although consolidation of the two proceedings is a best practice, the Court explained that a "guardianship proceeding thus exists within, but slightly apart from, an ongoing CINA case involving the same child." The records of the two cases "do not automatically merge." Here, the father had an opportunity to put on any relevant evidence in the guardianship proceeding, including evidence from the CINA proceeding, but he never attempted to do so. Thus, it was not error for the superior court not to treat the two proceedings as separate with distinct evidentiary records.

Finally, the Court clarified that parental rights do not have to be terminated before a guardian is appointed. Although termination of parental rights authorizes appointment of a guardian, "so too does suspension of those rights," in a CINA proceeding. A parent may still meet their burden for removing a guardian if the parent makes the required showing of a material change in circumstances in the CINA proceeding.

6. MISCELLANEOUS CASES

6.1 **Stirling v. North Slope Borough School District, 565 P.3d 181 (Alaska 2025)**

The Alaska Supreme Court affirmed a superior court decision upholding a school district's termination of a former principal who had modified the school's logo and motto to create an image that was disrespectful to Alaska Natives; however, the Court concluded that the former principal was denied a post-termination hearing and therefore was entitled to back pay.

In January 2022, R. Brett Stirling, the principal at Kali School in Point Lay, Alaska, used the school's printer to create a coaster as a retirement gift for a personal friend, who was also a fellow principal in the North Slope Borough School District. The coaster, which contained controversial and possibly derogatory sentiments toward Alaska Native children, was discovered by a school district employee, who, took pictures and shared them with another employee. Later that evening, the pictures were posted on social media where they received, almost immediately, overwhelmingly negative feedback.

The school district notified Stirling that it intended to terminate him for incompetence, among other reasons. A brief pre-termination hearing was held in which the school district moved forward with Stirling's termination. Stirling appealed to the school board and an additional hearing followed, but the school board upheld the termination decision. Stirling then filed an administrative appeal to the superior court, alleging that he was wrongfully terminated by the school district in violation of his right to free speech under the First Amendment and AS 14.20.095, and that he was not provided with sufficient due process during his termination hearing. The Utqiagvik superior court affirmed his termination.

On appeal, the Alaska Supreme Court concluded that because Stirling had conceded that he was unable to continue performing his customary duties as principal, the school board had a reasonable basis to terminate his employment on grounds of incompetency.

The Court also rejected Stirling's arguments that his termination violated his free speech rights under Alaska statutes and the First Amendment. The Court explained that a two-step analysis is used to determine whether the

First Amendment protects Stirling’s speech: (1) whether the speech addresses a matter of public concern and (2) whether the government’s legitimate interests outweigh those rights of the employee. The Court concluded the second step was dispositive here. “[A]ny speech-related rights [Stirling] may have had were outweighed by the Board’s legitimate interest fulfilling its responsibilities to its students and to the public.” Stirling’s conduct “disrupted the school’s normal functions” and “eroded the public trust between the school and members of its community.”

Although Stirling’s termination was affirmed, the Court concluded Stirling had not been provided with sufficient process during the pre-termination hearings. Consequently, the Court reversed part of the superior court’s order, remanding with instructions to calculate Stirling’s back-pay through the date of the school board’s post-termination hearing and decision.

6.2 Yeend v. Akima Global Services, LLC, No. 1:20-cv-01281, 2025 WL 959202 (N.D.N.Y. Mar. 31, 2025)

In September 2022, two former detainees from an immigration detention center in New York brought a class action lawsuit against the private contractor operating the center, Akima Global Services, LLC, which is a subsidiary of NANA Regional Corporation, an Alaska Native Regional Corporation.

The plaintiffs alleged that the detention center required detainees to work in a non-voluntary work program and that detainees were forced to labor in the housing units and kitchen without compensation, in violation of New York State labor law.

On March 31, 2025, the federal district court for the Northern District of New York denied Akima’s motion for summary judgment. The district court concluded that Akima was not entitled to derivative sovereign immunity and that factual issues precluded summary judgment.

The district court proceedings are currently stayed pending resolution of Akima’s interlocutory appeal to the Second Circuit.