



Legal Newsletter

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Supreme Court Case Changes Court Jurisdiction

A recent decision by the United States Supreme Court, in Washington, will affect whether Indian tribal courts, including the Navajo Nation courts, will be able to hear and decide certain kinds of cases. The decision will affect auto accident cases in which the accident happened on a state highway, and it will be used to argue against tribal court jurisdiction in other kinds of cases where the defendant is a non-Indian.

The Supreme Court decision came in the case of *Strate v. A-1 Contractors*. The case involved an accident that took place on a state highway inside the Fort Berthold Reservation in North Dakota. The person bringing the lawsuit was not a member of the tribe, although she was the widow of a member and her adult children were members. She filed suit in the tribal court, against a nonmember, claiming that he had been careless in driving a vehicle and had caused the accident. The nonmember was an employee of a construction company that had a subcontract with a tribal entity to do some work inside the reservation.

The injured person filed suit in the Fort Berthold court. The defendant filed in federal court, asking the federal court to rule that the tribal court did not have jurisdiction over the case. The federal court decision was appealed through the federal courts, to the U.S. Supreme Court. That court ruled unanimously that the tribal court did not have jurisdiction.

The Supreme Court had decided in earlier cases that tribal courts can only hear cases against non-Indians in certain kinds of circumstances. For example, the Court held in 1978 that tribes do not have jurisdiction to prosecute non-Indians for criminal charges, even if the crime was committed inside the reservation. In *Strate v. A-1 Contractors*, the Court held that the highway right-of-way, which allowed the state to build and maintain the road, transferred jurisdiction from the tribe to the state.

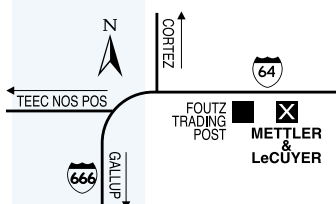
The Court had also previously decided that tribal courts have jurisdiction over non-Indians in civil (not criminal) cases arising within their territory if (1) the non-Indian has entered into "consensual relationships with the tribe or its members, through commercial dealings, contracts, leases, or other arrangements", or (2) the non-Indian does something that "threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe." In *Strate*, the Court ruled that the non-Indian driver had not entered into consensual relationships with the tribe, and that the highway accident did not affect the health or welfare of the tribe and that requiring such cases to be brought in state court would not interfere with tribal self-government.

We feel that this decision is very inappropriate for the Navajo Nation. Here, an accident may happen on a state highway,

yet the injured persons' residence and the location of the accident may be far from the nearest state court. Further, the Navajo court system is highly developed, and is fully able to hear and fairly decide such cases. However, Supreme Court rulings such as this one apply to all tribal courts in the United States. As often happens, the federal court which decides an Indian law case is located far from the affected reservations and Indian people, and does not have an adequate understanding of the realities of reservation life.

The *Strate* decision will be used by non-Indian defendants in other kinds of cases. We have already seen it used, for example, by a mining company that had operated inside the Navajo Reservation, in a lawsuit against it arising from an unsafe condition at the mine. Although that argument was not successful and the case was settled, it shows that the *Strate* decision gives ammunition to non-Indian defendants in various kinds of cases to try to resist tribal court jurisdiction.

In our practice, representing primarily Native American individuals, we are actively seeking to assert Navajo court jurisdiction over non-Indians in several cases, and have filed arguments with the courts giving reasons why *Strate* should not be applied to limit Navajo court jurisdiction.



Mettler & LeCuyer, P.C., is a law firm serving the Navajo Reservation area from its office at Shiprock, handling primarily personal injury and accident cases, on-the-job injuries, medical claims, disability and insurance claims, uranium miners and Social Security. The firm has a branch office in Albuquerque. The office in Shiprock is located on Highway 64, just east of Foutz Trading Co., and is open 9:00a.m. - 4:00p.m. Monday through Thursday.