

Appleby Law PLLC
277 South Washington Street
Suite 310
Alexandria, VA 22314

office: 703-837-6968
mobile: 202-577-5655

www.applebylawpllc.com

INDIAN LAW ALERT

OCTOBER 13, 2009

SMOKIN' JOE FRAZIER GETS A LESSON IN INDIAN LAW

On October 8, 2009, former boxing champion Joe Frazier got a basic lesson in Indian Law – federal courts are not always the forum in which cases against tribes will be heard.

In a suit in federal court against the Oneida Nation of New York, Smokin' Joe claimed that in 2001 the Oneida's Turning Stone Resort and Casino used his image without his permission to promote his daughter's fight against Laila Ali, Muhamamad Ali's daughter. Joe was particularly piqued because the casino put his image on mailings, leaflets and souvenirs, which, he claimed, associated him with gaming. Frazier argued he was "a person of Christian faith (who) suffered extreme emotional damage because of [the Oneida Nation's] conduct has irreparably damaged his reputation."

The 2nd Circuit Court of Appeals did not reach the merits of Frazier's claims. Instead, the court affirmed the lower court's ruling and ruled that the federal court did not have subject matter jurisdiction in this matter and directed Frazier to tribal court, should he wish to pursue his claims.

The court's decision is grounded in basic principles in federal and Indian law, namely that federal courts have jurisdiction only where there is a question of federal law to be decided or where the parties reside in different states and meet the requirements for diversity jurisdiction. In this first instance, this case (a tort claim) did not present a question of federal law. Second, it is well established that tribes are not citizens of states for purposes of establishing diversity jurisdiction. Consequently, the presence of a tribal party bars a federal court from hearing the suit under the court's diversity jurisdiction. Therefore, a suit in which a tribe is a party and in which there is no federal question jurisdiction must be dismissed by the federal court.

This case is a not-so-gentle reminder to everyone who contracts with, or has claims against, tribes: *The federal courts have limited jurisdiction. Expanded jurisdiction cannot be conferred on the federal courts by agreement of the parties. Absent federal jurisdiction, it is very likely that disputes will be litigated in tribal court.*

While Smokin' Joe's case arose in tort, it is important to remember that jurisdictional issues arise in every transaction with a tribe or tribal entity. Best practice commends that you consult with Indian law counsel before you transact your business with a tribe so that you know the courts' limitations and that disputes can be resolved in a manner and in a forum acceptable to you.

