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## Indian Law

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## INDIAN LAW

*Akers v. Hodel*, 871 F.2d 924

Author: Judge Anderson

Tribal affiliations of Victor Akers, a deceased Indian with both Osage and Pawnee property interests bequeathed to his wife and two grown children, subjected Akers' will to the approval of the defendant Hodel, the Secretary of the Interior ("Secretary"). After a hearing on the will, an Osage field solicitor found that Akers' refusal to acknowledge an illegitimate son as his child was the result of an insane delusion that materially affected the terms of the will. When the southwest regional solicitor of the Interior Department, acting for the Secretary, upheld the finding, the plaintiffs, Akers' children and widow (the "Akers"), sought reversal in federal court. The Akers asserted that because Victor Akers did not meet the legal definition of an Osage Indian, the Osage Agency did not have jurisdiction over his will. The Akers argued alternatively that if jurisdiction was proper, then the Secretary erred in finding Akers to be under an insane delusion which affected the terms of his will. The district court accepted the magistrate's recommendations that the Secretary's actions be upheld.

In addressing the issue of the appropriate agency to exercise the Secretary's jurisdiction, the Tenth Circuit considered whether Victor Akers was an Osage or a Pawnee Indian. The court reviewed original federal law regulating the property and affairs of Osage Indians and its amendments, and found neither legal error in the Osage Agency interpretation of the term Osage Indian nor factual error in the determination that Victor Akers fit the legal definition. The court, however, did hold that the Secretary's finding of insane delusion was both legally erroneous and against the clear weight of the evidence. The court found that Akers expressed a clear intention to exclude any others from a share of his property. The court reversed the district court's decision.

*Cotton Petroleum Corp. v. United States Department of the Interior*, 870 F.2d 1515

Author: Judge Barrett

Dissent: Judge McKay

Plaintiff, Cotton Petroleum Corporation, an oil and gas lessee with a well on restricted Indian allotment land, sought review of an administrative rejection of a proposed communitization agreement. The district court granted summary judgment for the allotted owners and Cotton appealed.

Reversing and remanding to the district court, the Tenth Circuit held that the Secretary of the Interior's rejection of the communitization agreement was arbitrary and capricious where the Secretary failed to discuss or analyze all of the relevant factors mandated under his own guide-

lines, did not explain his failure to do so, and inconsistently awarded allotted owners benefits of the communitization agreement which he otherwise rejected.

In noting that unitization is a conservation measure which benefits both lessor and lessee and tends to prevent waste of a natural resource, the court concluded that while rejection of the communitization agreement and termination of the lease might serve the economic "best interests" of the allotted owners by allowing them to renegotiate their lease for a greater amount, it ignored the possible adverse effect the decision might have on the remaining Indian land owners in relation to long-term mineral development.

*Equal Employment Opportunity Commission v. Cherokee Nation*, 871 F.2d 937

Author: Judge McKay

Dissent: Judge Tacha

Plaintiff, Equal Employment Opportunity Commission ("EEOC"), successfully brought suit to enforce an administrative subpoena duces tecum directing defendant, Cherokee Nation, to produce documents pursuant to the Age Discrimination in Employment Act of 1967 ("ADEA"). The Cherokee Nation appealed, maintaining that tribal sovereign immunity precluded EEOC jurisdiction absent specific congressional intent to bring tribes under ADEA coverage.

The Tenth Circuit reversed the district court's enforcement of the subpoena, asserting that the district court overlooked the fact that normal rules of construction do not apply when Indian treaty rights or matters involving Indians are at issue. Because of ambiguity and no clear indication of congressional intent to abrogate Indian sovereignty rights, the court held that the special canons of construction were to be applied to the benefit of Indian interests.