



## The Navajo Supreme Court Highlights Importance of Jurisdiction to Tribal Courts

The Navajo Supreme Court issued a recent opinion addressing jurisdiction and forum selection clauses in the context of real property on the Navajo Nation. *Neptune Leasing, Inc. v. Mountain States Petroleum Corp, et al.*, No. SC-CV-24-10 (2013).<sup>1</sup> The Court's focus highlights the importance of jurisdiction to tribal courts, the difference between the federal and Navajo tests for jurisdiction, and implicates whether forum selection clauses will be enforced.

**Case Background:** The lawsuit regarded a helium condensing plant located on trust land within the Navajo Nation and owned by Nacogdoches Oil and Gas, Inc. The plant was on land subject to a 1974 Business Site Lease between the Nation and predecessors of Nacogdoches. The 1974 Business Site Lease provided that "all structures, alterations, improvements, additions, machinery or fixtures" on the leased land would become the property of the Nation if such remained in place 90 days after expiration of the lease. The plant was related to several mining and pipeline leases between Nacogdoches and the Nation.

In 2006, Neptune Leasing sold the helium plant to Mountain States Petroleum. However, Neptune accepted a promissory note for the entire sales price, \$2,500,000, and Mountain States provided a security agreement with the plant as collateral for the note. Mountain States then sold the plant, and other assets, to Nacogdoches in 2007.

District Court Proceedings: Neptune sued in 2009, seeking repossession of the plant. Mountain States contended that the Court lacked personal jurisdiction over it. Nacogdoches contended that Neptune should establish the debt owed to it by Mountain States in a Texas court under Texas law, consistent with the 2006 contract between Neptune and Mountain States. If that debt was established, Neptune could then seek repossession in Navajo court.

The District Court decided it would "yield jurisdiction" to a Texas court to determine whether a debt was owed and whether the plant secured the debt. The Court retained "exclusive jurisdiction" over the plant, and attempts to repossess the plant. The District Court also determined that it lacked personal jurisdiction over Mountain States, as it had no current contracts or leases with the Nation, and did not have a presence on the Nation.

**Supreme Court Proceedings:** The Navajo Supreme Court determined that the Nation had personal jurisdiction over Mountain States based on its past business relations with the Nation. The Court also held that contractual agreements cannot void the Nation of jurisdiction over transactions regarding trust land, because the Nation has an interest in that land as a beneficiary of the trust relationship, or, as here, in improvements to the land, and transactions regarding land require Navajo consent. The Court declined to enforce the forum selection clause in the contract between Neptune and Mountain States.

---

<sup>1</sup> Modrall Sperling was counsel for one of the parties, Nacogdoches Oil and Gas, Inc.



**Why the Case Matters:** The Supreme Court's ruling is important in highlighting the different tests applied by Navajo and federal courts with regard to Navajo jurisdiction. The Navajo Supreme Court relies on inherent sovereign powers, particularly the right to exclude non-members. These powers are retained by the Nation, and further guaranteed by the Treaty of 1868. Thus, the Nation does not need to apply the test from federal law announced in *Montana v. United States*, 450 U.S. 544 (1981).

The *Montana* test differs from the Navajo test in at least two significant ways. First, the Navajo test presumes that jurisdiction exists, while *Montana* presumes that jurisdiction is lacking. Second, the Navajo test essentially requires only physical presence on the Nation (akin to the federal test for personal jurisdiction) to confirm jurisdiction. By contrast, and reduced as far as possible, the *Montana* test requires either a consensual relationship or a direct effect on the internal relations or political integrity of the tribal nation to overcome the presumption against jurisdiction. To date, the United States Supreme Court has never found these alternative requirements (usually called the "*Montana* exceptions") to be met, and have narrowed the exceptions since they were announced in 1981.

The Navajo Supreme Court has directed Navajo District Courts to test jurisdiction under both Navajo law and *Montana*. This is due to several recent cases in which federal courts have determined that the Nation lacks jurisdiction under the *Montana* test.<sup>2</sup> In this case, the Supreme Court determined that the business site lease established jurisdiction because it evidenced a "consensual relationship" between the parties and the Nation. Also, the transfer of Navajo lands (allegedly without a written lease and consent of the Nation) had a direct effect on the "political integrity, the economic security, or the health or welfare of the tribe."

It is notable that the Navajo Supreme Court primarily focused on the issue of subject matter jurisdiction. However, the District Court never claimed it lacked such jurisdiction. It only "yielded" to a Texas court to decide whether Mountain States owed Neptune a debt. Repossession of the plant was within the exclusive jurisdiction of the Nation, the District Court held. The focus of the Navajo Supreme Court reflects, we believe, the importance of jurisdiction to tribal courts and the divergence of the federal and Navajo tests for jurisdiction.

The ruling may complicate commercial and financing transactions regarding Navajo leased lands. In contracts involving Navajo interests, for instance financing, non-Indian parties routinely select a non-tribal forum for resolution of disputes between themselves. The Supreme Court held such a provision was unenforceable in Navajo courts because private agreements cannot deprive the Nation of jurisdiction over transactions regarding Navajo trust land. By calling into question the enforceability of a routine contract term, and characterizing forum selection clause to be a jurisdictional issue, the Court has made dispute resolution more complex and uncertain.

For more information, please contact [Brian K. Nichols](mailto:bkn@modrall.com) at [bkn@modrall.com](mailto:bkn@modrall.com).

---

<sup>2</sup> Examples include *Window Rock Unified School Dist. v. Reeves*, No. 12-CV-08059 (D. Ariz., March 19, 2013) and *EXC, Inc. v. Jensen*, No. 10-CV-8197 (D. Ariz., Aug. 9, 2012).