



Tribal Lending Conference

The Courts on Tribal Fintech

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Your Panelists

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Overview

- **Civil Litigation Update**
 - Where are cases filed and who is bringing them?
- **Supreme Court Update**
 - Tribal sovereignty and bankruptcy cases
 - Arbitration after *Coinbase*
- **Enforcement Update**
 - What you need to know about U.S. DOJ investigations
 - Minnesota AG lawsuit
- **Litigation Against Tribal Business Partners**
 - Why are business partners targets?
 - Cases involving tribal business partners
- **Debt Sales and Collections**
 - Does the “valid-when-made” defense protect third party purchasers and collectors?



Civil Litigation Update



Edelman Suits

- 57 suits filed in Illinois and Indiana since Aug. '21
 - Averaging a suit every 2 weeks
- Almost half are from repeat plaintiffs
 - 28 of 57
- Vast majority settle quickly on an individual basis
 - Only 4 of 38 suits older than six months have not settled

Case Name (Plaintiff with multiple cases highlighted)	No.	Tribe	Individual Settlement? (status on cases pending >6 mo.)
1. Combs v. LDF Holdings LLC, et al	3:21-cv-50307 (N.D. Ill.)	LDF	Yes
2. Qualls v. Anong LLC dba Availblue et al	1:21-cv-06598 (N.D. Ill.)	LDF	Yes
3. Combs v. Makes Cents, Inc., dba MaxLend et al	3:22-CV-50006 (N.D. Ill.)	MHA	Yes
4. Combs v. Aaniiih Nakoda Finance, LLC dba Bright Lending et al	3:22-CV50013 (N.D. Ill.)	Fort Belknap	Yes
5. Kalkbrenner v. Westside Lending LLC et al	1:22-CV-00420 (N.D. Ill.)	Menominee	Yes
6. Al-Nahas v. Rosebud Lending LZO et al	1:22-CV-00750 (N.D. Ill.)	Rosebud Sioux	Partial MTC Arb. Denied; Appeal Pending
7. Guinto v. Minto Development Corporation et al	1:22-CV-00887 (N.D. Ill.)	Minto	Yes
8. Harris v. FSSST Management Services, LLC et al	1:22-CV-01063 (N.D. Ill.)	Flandreau Santee Sioux	No MTC Arb. Denied
9. Kalkbrenner v. Chao et al	1:22-CV-01341 (N.D. Ill.)	Elem	Yes
10. Bock v. WLCC Lending, FDL	1:22-CV-01758 (N.D. Ill.)	Ogalala Sioux	Yes
11. Brown v. WLCC Lending d/b/a Fast day Loans et al	1:22-CV-00774 S.D. Ind.)	Ogalala Sioux	Yes
12. Toler v. Green Arrow Solutions d/b/a Green Arrow Loans, et al	1:22-CV-01214 (S.D. Ind.)	Big Valley	Yes
13. Thompson v. Chao et al	1:22-CV-01342 (S.D. Ind.)	Elem	Yes
14. Knotts v. Biboon, LLC d/b/a Bridge Lending Solutions et al	1:22-CV-01370 (S.D. Ind.)	LDF	Yes
15. Morgan v. West Side Lending, LLC et al	1:22-CV-03674 (N.D. Ill.)	Menominee	Yes
16. Lemmons v. Makes Cents, Inc dba Maxlend et al	1:22-CV-01455 (S.D. Ind.)	MHA	Yes
17. Hacker v. Minto Development Corporation et al	1:22-CV-01485 (S.D. Ind.)	Minto	Yes
18. Knotts v. Crane Lending, LLC dba Crane Finance et al	1:22-CV-01511 (S.D. Ind.)	Menominee	Yes
19. Rankin v. Ningodwaaswi, LLC et al	1:22-CV-01519 (S.D. Ind.)	LDF	Yes
20. Rankin v. Opichi, LLC dba Evergreen Services et al	1:22-CV-01537 (S.D. Ind.)	LDF	Yes
21. Arena v. East Line Lending, LLC et al	1:22-CV-01551 (S.D. Ind.)	Menominee	Yes
22. Slate v. Makes Cents, Inc. et al	1:22-CV-04165 (N.D. Ill.)	MHA	Yes
23. Long v. Layma, LLC et al	1:22-CV-04365 (N.D. Ill.)	Big Valley	Yes
24. Mitchell v. ReadySetGo Finance et al	1:22-CV-01855 (S.D. Ind.)	Kashia	Yes
25. Knotts v. WLCC Lending FFG dba Falcon Funding Group et al	1:22-CV-01935 (S.D. Ind.)	Ogalala Sioux	Yes
26. Hall v. Minto Development Corporation et al	1:22-CV-06770 (N.D. Ill.)	Minto	Yes
27. Dake v. Chao et al	1:23-CV-00203 (S.D. Ind.)	Elem	Yes
28. Hall et al v. Layma, LLC, et al	1:23-CV-00929 (N.D. Ill.)	Big Valley	Yes
29. Harris v. Eagle Valley Ventures et al	1:23-CV-01114 (N.D. Ill.)	Tonto Apache	Yes
30. Harris et al v. Credit Cube et al	1:23-CV-01153 (N.D. Ill.)	Big Valley	Yes
31. Conlin v. Layma, LLC aka Layama, LLC and dba Little Lake Lending	1:23-CV-00377 (S.D. Ind.)	Big Valley	Yes
32. Hall et al v. Green Arrow Solutions et al	1:23-CV-01624 (N.D. Ill.)	Big Valley	Yes
33. Kearby v. Eagle Lending, LLC et al	1:23-CV-00472 (S.D. Ind.)	Menominee	Yes
34. Hall v. Ascend Loans, LLC et al	1:23-CV-01722 (N.D. Ill.)	Habematolei Pomo	No MTC Arb. Pending
35. Walton v. Uprova Credit LLC et al	1:23-CV-00520 (S.D. Ind.)	Habematolei Pomo	No MTC Arb. Pending
36. McLaughlin v. Opichi, LLC et al	1:23-CV-02709 (N.D. Ill.)	LDF	Yes
37. Harris v. WLCC Lending FHC et al	1:23-CV-03149 (N.D. Ill.)	Ogalala Sioux	Yes
38. McLaughlin v. Makwa, LLC et al	1:23-CV-03350 (N.D. Ill.)	LDF	Yes
39. Fahy et al v. Minto Development Corporation et al	1:23-CV-03590 (N.D. Ill.)	Minto	No
40. Gernenz v. Makwa, LLC et al	2:23-CV-00192 (N.D. Ind.)	LDF	No
41. Futch v. Makwa, LLC et al	1:23-CV-01026 (S.D. Ind.)	LDF	No
42. Hohenbery v. Cascade Spring Credit et al	1:23-CV-01236 (C.D. Ill.)	Ogalala Sioux	Yes
43. Gernenz v. Big Picture Loans, LLC et al	2:23-CV-00221 (N.D. Ind.)	LVD	No
44. Hall v. Big Picture Loans, LLC et al	1:23-CV-04502 (N.D. Ill.)	LVD	Yes
45. Schnefke v. Chao et al	3:23-CV-02653 (S.D. Ill.)	Elem	No
46. Rehfeldt v. ZestFinance, Inc. et al	1:23-CV-01447 (S.D. Ind.)	Turtle Mountain	No
47. McLaughlin v. Rosebud Lending DRT et al	1:23-CV-05825 (N.D. Ill.)	Rosebud	Yes
48. Janetzke v. Opichi Funds LLC et al	1:23-CV-13823 (N.D. Ill.)	LCO	No
49. Kalkbrenner v. Hummingbird Funds, LLC et al	1:23-CV-14232 (N.D. Ill.)	LCO	No
50. Hanafi v. Uetsa Tsakits, Inc. et al	1:23-CV-01765 (S.D. Ind.)	MHA	Yes
51. Rehfeldt v. Wahido Lending et al	1:23-CV-01756 (S.D. Ind.)	Crow Creek Sioux	No
52. Stoicescu et al v. Layma, LLC et al	1:23-CV-14387 (N.D. Ill.)	Big Valley	No
53. McCune v. Choice Capital Fund et al	1:23-CV-01784 (S.D. Ind.)	Guidiville	No
54. Rehfeldt v. Green Arrow Solutions et al	1:23-CV-01786 (S.D. Ind.)	Big Valley	No
55. Earl v. Layma, LLC a/k/a Layama, LLC and d/b/a Little Lake Lending et al	1:23-CV-01812 (S.D. Ind.)	Big Valley	No
56. Souders v. Northern Star Lending LLC et al	1:23-CV-01834 (S.D. Ind.)	Menominee	No
57. Gernenz v. Niswi LLC et al	2:23-CV-00370 (N.D. Ind.)	LDF	No

Supreme Court Update

Impact of Bankruptcy and Arbitration Decisions on Tribal Fintechs

Coughlin 599 U.S. 382



- Consumer filed for bankruptcy after borrowing from tribal business
- Tribal business sought to collect from consumer after bankruptcy filing
- Consumer sought damages for violation of automatic stay rule
- Supreme Court held that the bankruptcy code does away with tribal sovereign immunity
 - 8-1 decision, Justice Gorsuch dissenting
- Bottom Line: Tribal businesses must respect bankruptcy stays

Coinbase 599 U.S. 736

- Issue decided:
 - If a District Court refuses to enforce an arbitration agreement against a consumer the lender gets to “press pause” on the litigation while it asks a higher court to review
- Take Aways:
 - A well drafted arbitration provision is vital to your consumer loan agreements
 - Avoid common problems (prospective waiver, procedural and substantive unconscionability) & protect your business partners
 - Not only can it keep a case out of court, even if the case stays in federal court, your arbitration provision can make litigation more costly and time consuming for your opponent



Enforcement Update

DOJ & Minnesota AG



Litigation Against Tribal Business Partners

Trends in Recent Litigation



Why are tribal business partners targets?

- Plaintiff's bar perceives tribal business partners to be the "deep pockets"
 - In larger class settlements, business partners have typically provided cash while tribal businesses have provided debt forgiveness
- Avoids difficult issues of tribal sovereign immunity
- Enforcement of arbitration agreements by third-parties can be more challenging
 - Provisions can be drafted with third-party enforcement in mind
- Plaintiff's bar uses RICO to expand the reach of lawsuits

Huntley v. Rosebud

- U.S. District Court in S.D. Cal. (here in San Diego!) sent case against tribal business partner to arbitration
 - No. 22-cv-1172, 2023 WL 5186247 (S.D. Cal. Aug. 11, 2023)
- Court noted Plaintiff's allegation that third-party vendors ran the business, held those vendors were entitled to invoke arbitration agreement
- Case settled shortly after being sent to arbitration

Manago v. Cane Bay

- U.S. District Court in Maryland dismissed claims against a tribal business partner and tribal leaders on the merits.
 - 2022 WL 4017299, No. 20-cv-0945 (D. Md. Sept. 2, 2022)
- Court faulted Plaintiffs for lack of detail
 - “[T]he amended complaint is devoid of any facts about the structure or organization of the alleged RICO enterprise.”
 - “[W]hile Plaintiffs generally allege that the Cane Bay Defendants ‘run the business’ at issue . . . the amended complaint does not state the nature of the roles and responsibilities that the Cane Bay Defendants had[.]”
- A note of caution:
 - This is the decision of a single judge and is the subject of a pending appeal (4th Cir. No. 22-2044)

Eventide Bankruptcy

- Former tribal business partners sued in multiple jurisdictions (Oregon, Massachusetts, and Virginia)
 - Some with pending motions for class certification; Some with substantial judgments already (\$40+ million)
- Filed for Bankruptcy in September & October 2023 in Texas
- Prior bankruptcy filing was dismissed in 2020 on a finding of lack of good faith
- Litigation is ongoing with the tribal business itself as well



Debt Sales & Collections

Risks and Rewards



The Challenge

- Sovereign lenders make loans compliant with Tribal and federal law
- What happens to those loans when assigned or sold for collection to a non-sovereign entity?
- In theory, the “valid when made” rule provides protection
 - This is an old rule going back at least to 1833. *CFPB v. CashCall*, 35 F.4th 734, 745 (9th Cir. 2022) (“[I]f a loan is valid when made, it does not become usurious upon transfer to an assignee in a different jurisdiction.”) (citing *Nichols v. Fearson*, 32 U.S. 103, 109 (1833)).
 - Enforcement of this rule is not guaranteed. In the same case the court said: “But these loans were not valid when made because there was never any basis for applying the law of the Tribe in the first place, and they were invalid under the applicable laws of the borrower’s home States.”
 - Case involved an individual tribal member making loans from a state chartered corporation, not a tribally created, owned, and controlled company.

Dunn v. GTM

- Plaintiffs took out loans with MobiLoans in 2016 and 2017, respectively.
- Plaintiffs defaulted on their loans. Their accounts were sold to Global Trust Management, LLC (“GTM”).
- Plaintiffs sued GTM and its COO, Frank Torres, for alleged violations of the FDCPA
- Middle District of Florida denied Defendants’ motions to compel arbitration.
 - Delegation clause is unenforceable
 - Arbitration agreement is unconscionable
- Defendants appealed to the Eleventh Circuit (AL, GA, FL)
 - Oral arguments were March 2022
 - No decision from Eleventh Circuit yet

Key Questions on Sales/Collections

- Given uncertainty, ask:
 - Is the revenue worth the risk?
 - Does your vendor or purchaser have a track record of compliant collections?
 - What, if any, guardrails do you want to put in place?

Case to Watch: *West Flagler v. Haaland*

- Gaming case. State statute provided “wagers on Sports Betting ... made ... using a[n] ... electronic device shall be deemed to take place exclusively where received at the location of the servers ... at a Facility on Indian Lands.”
- Brick & mortar casino operators sued, alleging this violates IGRA by authorizing gaming outside of Indian lands
- D.C. Circuit held lawfulness of wagers placed from mobile devices outside of Indian lands was a matter of state law. Florida could agree to treat the wagers as occurring on Indian lands.
- SCOTUS briefly issued a stay, then lifted the stay. Further review may be sought.

Thank you!



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