

**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

DEBORAH HEMSTED, *Applicant*

vs.

UNITED INDIAN HEALTH SERVICES and TRIBAL FIRST INSURANCE, *Defendants*

**Adjudication Number: ADJ10124964
Eureka District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant, United Indian Health Services (“UIHS”) seeks reconsideration of the Findings and Order of March 28, 2024, in which the Workers’ Compensation Administrative Law Judge (“WCJ”) found that applicant, while employed on September 24, 2014 as a Medical Assistant III by UIHS, claims to have sustained injury arising out of and in the course of employment to her back, hips, shoulders, left wrist and musculoskeletal system. As relevant here, the WCJ also found that UIHS is not entitled to sovereign immunity, that the Workers’ Compensation Appeals Board (“WCAB”) has jurisdiction over applicant’s claim of injury, and that the issue of waiver of sovereign immunity is moot. Pursuant to these findings, the WCJ ordered that UIHS is not a tribal entity with sovereign immunity, and that the WCAB has jurisdiction.

UIHS contends that the California Rural Indian Health Board (“CRIHB”) is an Indian Tribe under the Indian Self-Determination and Education Assistance Act of 1975 (“ISDEAA”),¹ that because it has the full rights of an Indian Tribe under the ISDEAA, CRIHB has sovereign immunity, and that UIHS is entitled to immunity as an arm of CRIHB pursuant to *People v. Miami Nation Enterprises* (2016) 2 Cal.5th 222 (“*Miami*”).

The Board did not receive an answer from the self-represented applicant.

The WCJ submitted a Report and Recommendation (“Report”).

¹ 25 U.S.C §§ 5301 et seq.

We have considered the allegations of defendant’s Petition for Reconsideration and the contents of the Report of the WCJ with respect thereto. Based on our review of the record, and for the reasons stated below and in the WCJ’s Report, which we adopt and incorporate to the extent set forth in the attachment to this opinion, we will deny defendant’s Petition for Reconsideration.

In denying reconsideration, we have given the WCJ’s credibility determinations great weight because the WCJ had the opportunity to observe the demeanor of the trial witnesses. (*Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ’s credibility determinations. (*Id.*)

We further note that in asserting UIHS is so interwoven with the California Rural Indian Health Board (“CRIHB”) that UIHS enjoys sovereign immunity, UIHS relies heavily upon *Luiz v. Masonite* (2023) 2023 Cal. Wrk. Comp. P.D. LEXIS 209 (“*Luiz*”).

In *Luiz*, the Board panel applied the five-factor test of *People v. Miami Nation Enterprises* (2016) 2 Cal.5th 222 and found that the entity in question, United Native Housing, was an “arm-of-the-tribe” entitled to sovereign immunity. United Native Housing had been created to access funds that were unavailable to tribal entities, to serve as a regional affordable housing provider when a tribe did not have land or cannot provide housing, to take advantage of the capacity and experience of tribal entity Northern Circle, to achieve housing goals, and to provide housing assistance to all income-qualified individuals, but with a focus on reaching Native Americans. The Board panel found that although there was a lack of intent for United Native Housing to share sovereign immunity with the tribes and Northern Circle, the other four *Miami* factors weighed in favor of sovereign immunity—United Native Housing’s method of creation, its purpose, Northern Circle’s control over United Native housing, and the financial relationship between the two entities.

In this case, as in *Luiz*, the WCJ concluded that although there was a lack of intent for UIHS to share in CRIHB’s sovereign immunity, the purpose of UIHS – to provide health care services to tribal members and their families – weighed in favor of sovereign immunity. Otherwise this case is different, however, because the WCJ found that the method of creation of UIHS, control over UIHS by CRIHB, and the financial relationship between the two entities did not weigh in favor of sovereign immunity for UIHS. In other words, here the WCJ found that four of five of the *Miami* factors do not support a finding of sovereign immunity.

Based upon our review of the record, and as set forth in the WCJ's Report, we are not persuaded that the WCJ abused her fact-finding discretion in applying the five-factor test of *Miami* and in concluding that UIHS is not entitled to sovereign immunity. The WCJ's approach and ultimate finding against sovereign immunity for UIHS, even though in contrast to *Luiz* on somewhat similar facts, follows the Supreme Court's directive in *Miami* that each case calls for a fact-specific inquiry into all factors and an overall assessment of whether the entity seeking sovereign immunity has carried its burden of proof by a preponderance of the evidence. (*Miami, supra*, 2 Cal.5th at 248.)

Finally, we also observe that the effect of the WCJ's decision is to include this applicant in the class of persons who are entitled to statutory workers' compensation benefits, consistent with the legislative mandate of liberal construction under Labor Code section 3202. (*Moore v. Cleveland Browns* (2022) 2022 Cal. Wrk. Comp. P.D. LEXIS 380, slip op. at p. 27, citing *Travelers Ins. Co. v. Workers' Compensation Appeals Board (Coakley)* (1967) 68 Cal.2d 7, 13 [32 Cal.Comp.Cases 527].)

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUNE 4, 2024

SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

**DEBORAH HEMSTED
PEEBLES KIDDER BERGIN & ROBINSON LLP
LIEBERT CASSIDY WHITMORE**

JTL/ara

I certify that I affixed the official seal of
the Workers' Compensation Appeals
Board to this original decision on this date.
CS

REPORT ON RECONSIDERATION

- a. Deborah Hemsted...while employed on September 24, 2014 as a Medical Assistant III, at Arcata, California, by United Indian Health Services, insured for workers' compensation by Tribal First Insurance, sustained injury arising out of and in the course of her employment.

- b. Identity of Petitioner: Defendant
Timeliness: Yes
Verification: Yes

- c. Date of Findings and Order: March 28, 2024

Petitioner’s Contentions:

- 1. There is an interwoven connection between United Indian Health Services (UIHS) and its founding tribal governments as well as between CRIHB and UIHS. The judge was wrong to determine UIHS was not a tribal entity entitled to assert sovereign immunity.
- 2. The judge referred to the incorrect Self-Determination agreement between CRIHB and the United States. The Judge should have relied on the agreement in Exhibit E instead of the agreement in Exhibit C.
- 3. The judge's finding that there is not direct tribal funding for UIHS is not accurate and not dispositive.

DISCUSSION

Applicant Deborah Hemsted...while employed by United Indian Health Services as a [Medical Assistant III] sustained an admitted industrial injury to multiple body parts on September 24, 2014. She was provided benefits and medical treatment through Tribal First.

A dispute arose between Ms. Hemsted and Tribal First. Ms. Hemsted filed an application for adjudication of benefits with the Eureka Workers' Compensation Board Office on September 25, 2015.

Tribal First wrote a letter to the Board dated October 2, 2015 stating UIHS was a tribal economic enterprise owned by federally recognized Indian tribes. Tribal First asserted sovereign immunity and asked the matter be dismissed for lack of jurisdiction.

On October 19, 2015 the undersigned issued an order suspending action requesting written substantiation UIHS was a tribally owned enterprise and suggesting Ms. Hemsted meet with the Information and Assistance Officer.

On November 6, 2015 Tribal First's attorney wrote to the Board providing additional information regarding UIHS and reiterating the assertion of sovereign immunity.

On November 19, 2015 [the WCJ] issued a Notice of Intent to Dismiss Case based on the written substantiation provided by defense counsel.

Ms. Hemsted filed a Declaration of Readiness to Proceed dated November 28, 2015 requesting a status conference regarding determination of tribal law and jurisdiction. A status conference took place on December 23, 2015. Applicant objected to dismissal and wanted to litigate the issue of jurisdiction.

The case was continued to March 6, 2016 and then to June 22, 2016. Parties were given time to create and submit trial briefs. Trial briefs were submitted. The June 22, 2016 hearing was continued to July 13, 2016 at defendant's request.

On July 13, 2016 a pretrial conference statement was submitted. The case was set for trial on September 27, 2016. At the trial defendant suggested the sole issue for submission be the defendant's sovereign immunity as a jurisdictional bar. Parties agreed the issue of whether sovereign immunity was waived was to be deferred.

Ms. Hemsted testified. Defendant requested time to submit a final trial brief. Defendant was granted until October 19, 2016 to submit the brief and applicant was given until November 17, 2016 to respond. Case was submitted as of November 18, 2016.

My decision issued on December 2, 2016 and included the following language:

The issue of whether sovereign immunity has been waived in the present case has been bifurcated and remains to be adjudicated. That issue is not decided here.

It is parenthetically noted the Appellate Court in Tribal First Insurance insurer for Black Bart Casino vs. WCAB 70 Cal Comp Cases 922 remanded the issue of waiver of sovereign immunity for further discovery. The issue in that case was different as the tribe had decided to insure for workers' compensation through the state system. The question was whether this decision to submit to the Board's jurisdiction acted as a waiver of the tribe's sovereign immunity when it came to a claim/or increased benefits under Labor Code Section 132a. The case was remanded to the trial level to further develop the record. Other than that unique circumstance it appears the Board is reluctant to determine it has jurisdiction over disputes with regard to workers' compensation.

There is no showing here that Ms. Hemsted has a viable remedy to address her dispute over her entitlement to workers' compensation benefits. This is of concern. However, even if there is no alternative dispute procedure in place, the remedy may not be within the power of this Board.

The burden of proving a waiver of sovereign immunity is heavy. Case law consistently requires either an express waiver or an implied waiver, which may be difficult to establish. However, Ms. Hemsted retains the right to try.

She also has the right to appeal this determination by filing a timely, verified Petition/or Reconsideration. She may contact the Information and Assistance Officer for assistance in the procedure. "

No Petition for Reconsideration was filed. Nothing was heard from the parties until 2018. On June 18, 2018 a pretrial conference statement was filed by defendant. The issue was whether the previously established sovereign immunity was waived.

At a hearing on October 16, 2018 Ms. Hemsted indicated she was recovering from surgery and needed more time. Case was continued to MSC on January 8, 2019. The Minutes of Hearing indicate parties were discussing settlement, and the case was continued to January 28, 2019 to provide them an opportunity to conclude negotiations.

At the hearing of January 28, 2019 Ms. Hemsted said she was considering hiring an attorney and wanted time to do so. Case was continued to trial on May 8, 2019 to allow Ms. Hemsted to locate an attorney. The MOH state no other continuances would be granted.

On May 19, 2019 the matter was tried and submitted for decision. On June 21, 2019 a decision issued finding: *"Whatever claim of sovereign immunity Tribal First Insurance had was waived by the tribes who created United Indian Health Service."*

Defendant filed a Petition for Reconsideration on July 8, 2019. The July 22, 2019 report on reconsideration recommended the Petition be denied. On September 3, 2019 the Board granted Reconsideration for further study.

On August 17, 2023 the Board issued its decision rescinding both the Findings and Order of December 2, 2016 and the Findings and Order of June 21, 2019 and returning the matter to the trial level for further proceedings.

On August 21, 2023 [the WCJ] wrote to the parties advising them the Eureka office was now entirely virtual and advising them mail was to be sent to the Santa Rosa Office. Notice of the hearing would be provided under separate cover.

On September 11, 2023 a status conference was held. The new defense attorney and Ms. Hemsted were offered the opportunity to present additional evidence. Both parties declined. Defendant was given until October 20, 2023 to file and serve a new trial brief. The case was set for October 24, 2023 to discuss how much time Ms. Hemsted would need to respond. This is a courtesy I usually extend to unrepresented applicants to facilitate due process and their right to be heard.

At the October 24, 2023 status conference Ms. Hemsted was given until December 12, 2023 to submit her trial brief. Case continued to MSC on December 12, 2023 to be continued to trial so a court reporter would be available to submit on the record. Both parties were offered the opportunity to submit additional evidence and/or testimony. Both parties declined.

The Minutes of Hearing for the MSC on December 12, 2023 contain a notation parties agreed the September 27, 2016 and May 8, 2019 Minutes of Hearing accurately reflected the stipulations and issues for submission. The matter was submitted for decision on February 14, 2024.

The current Findings, Order and Opinion on Decision issued on March 28, 2024. [The WCJ] determined UIHS is not a tribal entity with sovereign immunity and therefore the issue of waiver of sovereign immunity is moot. [The WCJ] decided the WCAB does have jurisdiction over Ms. Hemsted's claim.

Defendant submitted an exceptionally well written, well-reasoned Petition for Reconsideration. [...]

However, using the five-factor analysis set forth in People vs. Miami Nation Enterprises (2016) 2 Cal. 5th 222 and applying the facts to the law, it remains my opinion that UIHS is not a tribal entity entitled to sovereign immunity.

With regard to the first factor discussed in Miami Nation-method of creation-- the opinion on decision noted:

"Witness Shirley Laos testified she was on the Board of UIHS and a member of the Trinidad Rancheria. She testified UIHS was created through the California Rural Indian Health Board. UIHS was authorized by the tribes to provide health services to the tribal members. If the tribes are federally chartered, they can grant immunity. It was not done here.

Witness Virgil Moorehead was the tribal chairman of Big Lagoon Rancheria. Big Lagoon Rancheria is one of the 8 or 9 tribes that currently sanction UIHS under state law to function as the health provider. UIHS was organized as a State of California 501 (c) (3) corporation. The courts have held that if a tribal entity is a California 501 (c) (3) corporation that fact alone is not dispositive of whether the entity enjoys sovereign immunity. (Luiz vs. Masonite, Northern Circle Indian Housing Authority, 2023 WL 5086742

Mr. Moorehead continued: when UIHS was created only 4 of the involved tribes were federally recognized. Not all of the entities involved in the creation of UIHS were federally recognized tribes."

Defendant contends analysis of Exhibit E is inapposite because it was a self-determination agreement effective in 2010 and not in effect at the time of Ms. Hemsted's injury. My point was the 2010 agreement listed UIHS and there was no mention of UIHS in the subsequent self-determination agreement dated October 17, 2016. (Defense Exhibit C)

[The WCJ] reviewed each of the resolutions submitted by defendant in support of its contention UIHS is a tribal organization because it is associated with CRIHB. Defendant argues because of the association UIHS is sovereign. The argument was not persuasive when considering the way UIHS was created.

Quoting from the opinion:

*Defense Exhibit F is a Resolution of the Big Lagoon Rancheria identifying UIHS as its designated local care provider of health care and related services subcontracted with the California Rural Indian Health Board. (hereafter CRIHB) The tribe designated CRIHB as a Tribal organization. It described UIHS as a subcontractor but there is **no designation of UIHS as a tribal organization.***

*Exhibits G and H are resolutions of the Blue Lake Rancheria and Elk Valley Rancheria, respectively. Blue Lake Rancheria (Exhibit E) and Elk Valley Rancheria (Exhibit H), designated CRIHB as a tribal entity. **There is no mention of UIHS.***

*Exhibit I Is a tribal resolution of the Coast Indian Community designating "UMIS" as the local health provider to subcontract with the CRIHB. **The resolution designated CRIHB as a tribal organization. No such designation was made for the local health provider described as "UMIS".***

*Exhibit J is a similar resolution of the Bear River Band of the Rohnerville Rancheria. This resolution specifically designates UIHS as the local provider of health care and related services and states: " ... it is in the best interest of its members for its local designated provider to subcontract with the California Rural Indian Health Board." Consistent with the other resolutions CRIHB is designated as a tribal organization. Unlike some of the other Exhibits, **this resolution does designate UIHS as the local provider of health care services. However, it does not designate UIHS as a tribal organization.***

*Exhibit K is the resolution of the Howonquet Indian Council of the Smith River Rancheria dated February 12, 1991. It identified UIHS as its designated local provider of comprehensive health care and related services "... to subcontract with" CRIHB. As with the other documents; **CRIHB is designated as a tribal organization, UIHS is not.** Paragraph 5 states CRIHB shall" ... obtain the prior approval of the Tribe and the Tribe's local health care provider prior to submitting a proposal for any specific contract ..."*

*Exhibit L-Resolution of the Table Bluff Reservation of the Wiyot Tribe dated January 8, 2001, renews its contract with CRIHB stating: "CRIHB has been the Tribe's Indian Self-Determination Act contractor with the Indian Health Service, and wishes to maintain this relationship. **No mention in the document of UIHS.***

*Exhibit M-resolution of the Trinidad Rancheria dated December 11, 1993 identified UIHS as the designated local provider" ... to subcontract with the California Rural Indian Health Board (CRIHB)" The wording is similar to that of Exhibit K-requiring CRIHB to obtain the prior approval of the tribe and the tribe's local health care provider "prior to submitting a proposal for any specific contract ..." **CRIHB is designated as a tribal organization, UIHS is not.***

Exhibit N is difficult to read. It is a resolution of the Yurok tribe dated July 16, 1992 which specifically describes UIHS as a "...legally established organization of Indians which currently sub-contracts with CRIHB as a P. IR-93-638 subcontractor to provide Indian health care service

on behalf of most Indian tribes and other eligible Indians within the UIHS Service Area of Del Norte and Humboldt County; designate and sanction UIHS Inc. as its local health care provider of comprehensive health care... The Tribe designates CRIHB, Inc. as a tribal organization within the meaning of P. L. 93-968..."

Mr. Virgil Moorehead is chair of the Big Lagoon Rancheria and a former chairman of the board of UIHS. He testified when UIHS was created only 4 of the tribes were federally recognized. In 2019 there were 9 members on the Board from the various tribes and 10 members from the community. If the tribes are federally recognized, they can grant sovereign immunity -it was not done here. (MOH September 27, 2016)

UIHS was created through resolution of multiple local tribes, some of which were federally recognized from the beginning and others were not. UIHS was not designated as a tribal organization in the various resolutions of the tribes submitted into evidence, with the possible exception of the Yurok Tribe. (Defense Exhibit N)

The method of creation weighs against sovereign immunity.

Turning to the second test-whether the tribes had the intent to share their sovereign immunity once again the factors were weighed and led to a finding of no sovereign immunity.

As stated in the opinion:

Applicant's Exhibit 4 is a letter with attachment from Garth Sundberg, Trinidad Rancheria Chairman. Judicial notice is taken Mr. Sundberg is a former member of the Humboldt County Board of Supervisors and well known in the community. Mr. Sundberg stated UIHS was organized under the General Non-Profit Corporation Law of the State of California. As noted above this fact standing alone is not determinative of the issue of sovereign immunity.

The Resolution attached to Mr. Sundberg's letter identified CRIHB as the Trinidad Rancheria's designated local provider of health care. UIHS was to subcontract with the California Rural Indian Health Board (CRIHB). CRIHB was described as a "tribal organization within the meaning of PL 93-638" and stating: "Nothing in this resolution shall be construed as effecting, modifying, diminishing, or otherwise impairing sovereign immunity from suit enjoyed by an Indian tribe or authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people." [Applicant's Exhibit 14 is the same letter from Mr. Sundberg without the attachment.]

The resolution's intent to designate CRIHB as a tribal organization does not extend to UIHS and weighs against sovereign immunity. It was apparent from the creation documents summarized under the creation section and the testimony of witnesses there was no intention to share sovereign immunity with UIHS. Defendant contends the two entities are intertwined and thus UIHS is entitled to immunity. The argument is well made but not persuasive.

In addressing the third factor-purpose: it was determined purpose weighs toward tribal immunity. If purpose were the only factor to be considered I would have found UIHS was entitled to sovereign immunity.

Factor four-control- weighed against sovereign immunity. Quoting from the opinion:

Returning to the testimony of Shirley Laos, UIHS was governed by a board of directors. No single member acts individually. (MOH May 8, 2019 p. 5) No individual tribe controlled UIHS.

Deborah Hemsted testified she is a member of the Trinidad Rancheria. She was employed by UIHS. She described the governing Board as including 5 at large members that are not necessarily members of the tribes. The Board is selected by election. UIHS does not govern any tribes and no tribe tells UIHS what to do. (MOH September 27, 2016 p. 6)

Exhibit O is a list of the federally recognized tribes as of January 29, 2016. The tribes included many of the tribes who participate in the UIHS services in Humboldt and Del Norte counties: Yurok, Karuk, Wiyot, Cher-Ae Heights Indian Community of the Trinidad Rancheria, Big Lagoon Rancheria, Bear River Band of the Rohnerville Rancheria, Blue Lake Rancheria.

Exhibit P is the Order of the United States District Court in the case of Tillie Hardwick vs. United States of America C 79-1710 SW; listing 17 Rancherias restoring and confirming their status including Blue Lake, Rohnerville, and Smith River.

Ms. Hemsted testified when UIHS moved from tribal land to off tribal land she understood from Jerry Simone and Amos Tripp that state laws would now apply. When UIHS moved off tribal land she was paid overtime. She was not paid overtime when they were on tribal land. (MOH September 27, 2016 p. 6)

Control weighs against sovereign immunity.

Final factor five, financial relationship, was considered.

Deborah Hemsted testified UIHS is never sure of their income. (MOH September 27, 2016) Mr. Moorehead testified CRIHB had authority to apply for grants on behalf of the tribes including UIHS. The... funding for UIHS did not come from the tribes but from various grants obtained by CRIHB and distributed to UIHS.

Defendant's Exhibit B is notice of the self-determination contract for the period September 20, 2013 through September 19, 2016. It is between DHHS and the California Rural Indian Health Board, Inc. It establishes the source of funding that was ultimately provided to UIHS. Federal funds were provided to CRIHB for distribution.

Applicant's Exhibit 18 confirms CRIHB transfers federal funds and/unctions [sic] to subcontractors including but not limited to UIHS.

UIHS was created as a California non-profit corporation. While this alone is not a dispositive factor, it is noted any action against UIHS would not threaten the tribes' resources, nor the resources of the members of the board.

There was no direct funding from the tribes to UIHS. Funding weighs against sovereign immunity.

*Defendant's argument on Reconsideration with regard to funding is well made. The point any monies lost through suit would not be available to UIHS to provide medical treatment to the tribes weighs in favor of sovereign immunity. I noted in my opinion: *The [Appeals Board] Panel Decision of Luiz v. Masonite*, 2023 Cal. Wrk. Comp. P.D. LEXIS 209 (Cal. Workers' Comp. App. Bd. August 4, 2023) is of assistance in this case. The Board noted that when applying the Miami five factor test "no single factor is dispositive" " ' ... rather a fact-specific inquiry into all the factors followed by an **overall assessment** of whether the entity has carried its burden by a preponderance of the evidence "' [quoting Miami]*

My overall assessment was that UIHS did not carry its burden of proof with regard to its claim of sovereign immunity. In addition to the five factors, I took judicial notice of other forums where the UIHS assertion of sovereign immunity had failed:

"Evidence Code Section 452 lists those matte[r]s which may be judicially noticed. Section (c) permits judicial notice of: "Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States." Section (g) states: "Facts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute."

The Board has taken judicial notice of the determinations of other "judicial departments" in the past. For example: an arbitrator's decision in Holcomb v. Colts, 2014 Cal. Wrk. Comp. P.D. LEXIS 20 (Cal. Workers' Comp. App. Bd. January 13, 2014)

Judicial notice is taken in the present matter that sovereign immunity has been asserted by UIHS in other forums and failed. While the determinations of other judicial bodies are not controlling, they are indicative of the standing of UIHS in this community.

Richard Baland vs. United Indian Health Services, Inc. and Robert Davis vs. United Indian Health Services, Inc. was litigated in the Humboldt County Superior Court. [It appears the case number was] Baland v. United Indian Health Servs., Inc., No. C 16-06057 WHA (N.D. Cal. Dec. 30, 2016).

Those lawsuits arose from the following circumstances. In November of 2013 John Lott, the corporate compliance officer of UIH-IS began to investigate overspending at UIHS. His investigation led to concerns about possible misconduct by some members of the board of directors of UJHS. Those concerns were shared with the CFO Richard Baland and the CEO Robert Davis. After further investigation the issues were reported to the board of directors and the federal government. UIHS terminated Lott, Baland, and Davis in July 2014. In July 2016 Baland and Davis filed suit in Humboldt County Superior Court against UIHS, as well as board members individually. UIHS removed the actions to federal court to address jurisdiction. Plaintiff...moved to remand. UIHS contended they were protected by tribal sovereign immunity. The court cited

Bodi v. Shingle Springs Band of Miwok Indians, 832 F. 3d 1011, 1023 n. 16 (9th Cir. 2016) and *Oklahoma Tax Commission v. Graham*, 489 U.S. 838 and held a tribal immunity defense does not provide an independent basis for federal jurisdiction.

The matters were remanded to Humboldt County Superior Court and UIHS was ordered to pay attorney's fees because defendant "... knew their position was objectively unreasonable." The court cited *Green v. United Indian Health Services, Inc.*, Humboldt County Superior Court No. DR 120103 (Mitlyng Deel., Exhs. 2-3). The California Court of Appeal denied United Indian's petition for a writ of mandate.

The same parties [Baland and Davis] presented the same sovereign immunity issue to the Labor Commissioner. It was determined by assistant Special Counsel John Cumming of the California Department of Industrial Relations that UIHS did not have tribal immunity from the retaliation claims filed by Baland and Davis. (Applicant's Exhibit 16: 37089-SACRCI and 37091-SACRCI)"

[...]

Continuing with my opinion in the present matter:

"Applicant's Exhibit 18 is Judge Reinholdtsen's order denying defendant UIHS 's motion to quash service of summons and complaint and to dismiss the matter of *Bonnie Green et al vs. United Indian Health Services* Case Number DRJ 20103. That case was filed contesting the validity of a board of directors' election held by UIHS in November of 2011.

In *Green* UIHS claimed sovereign immunity. The claim was rejected, and the matter remained in Superior Court.

The efforts of UIHS to claim sovereign immunity has failed in Superior Court and before the Labor Commission. The result in this forum is the same. It is determined UIHS has no sovereign immunity. "

UIHS and Tribal First have not met their burden of proof. They have not been successful in asserting sovereign immunity in the Superior Court, at the Court of Appeal, nor before the Labor Commissioner. While the standards are different in each forum, the result [reached by the other tribunals offers further support for the WCJ's rejection of sovereign immunity herein.] [...]

RECOMMENDATION

It is recommended that the Petition for Reconsideration be denied.

DATE: May 2, 2024

Jane Madsen
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE