

## Nev. Tribe Says Sovereignty Protects It From BP's Suit

By **Adam Lidgett**

Law360, New York (October 26, 2017, 10:16 PM EDT) -- The Yerington Paiute Tribe urged a Nevada federal judge Thursday to toss a suit that seeks to bar the tribe from bringing claims against BP America Inc. and Atlantic Richfield Co. in tribal court over environmental damage at an abandoned copper mine.

The tribe, its chairman, Laurie A. Thom, and Yerington Paiute Tribal Court Judge Sandra-Mae Pickens filed motions to dismiss the suit, arguing they are protected by the tribe's sovereign immunity. The tribe and Thom filed jointly, and Judge Pickens filed her own motion.

Judge Pickens told the court that BP and ARCO haven't even tried to show how she is not protected by sovereign immunity.

"Judge Pickens has committed no ongoing violation of federal law, the U.S. Constitution or federal common law, and plaintiffs have not alleged as much," she said. "If Judge Pickens determines that she may hear the tribal action, she will not be in violation of federal common law because the tribal court's subject-matter jurisdiction is plausible and colorable on the face of the tribal complaint."

Thom and the tribe presented similar arguments, and said that the tribal court should be able to determine its own jurisdiction and that all tribal remedies should be exhausted before the federal court rules on tribal court jurisdiction.

The companies **filed their** suit in September in a bid to enjoin the tribe from pursuing claims in the underlying tribal court action. That case stems from mining conducted by the Anaconda Mining Co., ARCO's predecessor, from the 1950s through 1970s at the Anaconda Copper Mine and from contamination that migrated onto tribal property.

ARCO and its corporate parent BP have said that under U.S. Supreme Court precedent, the tribal court can't exercise subject-matter jurisdiction over the tribe's claims, given that the companies aren't tribal members and they aren't alleged to have conducted any of the alleged activity on tribal land. The mine doesn't overlap any tribal territory, ARCO and BP said.

However, the Yerington Paiute and Thom said Thursday that the tribe has alleged conduct has happened within its tribal boundaries.

"Both the tribe and the chairman have sovereign immunity from suit in federal district court," Austin Tighe, an attorney for the tribe and Thom, said in a statement. "The tribal court — where we sued for the very same toxic torts on which BP already paid the tribe's neighbors almost \$20 million — is the proper court to determine its own jurisdiction."

BP said in a statement that the substantive claims alleged in the tribal court will be addressed

when the issue of what court has jurisdiction is put to rest, although the company believes the tribal court doesn't have jurisdiction over the substantive claims.

"Tribal court jurisdiction is limited to tribal members and conduct on the reservation," the statement said. "Therefore, we have asked a federal court to address the question of tribal court jurisdiction. If we prevail, the substance of the YPT's claims will be heard on in a federal court with appropriate jurisdiction."

Counsel for Pickens did not immediately respond to requests for comment on Thursday.

BP and ARCO are represented by Robert A. Dotson and Jill I. Greiner of Dotson Law and Kenzo Kawanabe, Adam S. Cohen, Constance L. Rogers and Kyle W. Brenton of Davis Graham & Stubbs LLP.

Pickens is represented by Daniel T. Hayward and Joshua M. Halen of Laxalt & Nomura Ltd.

The tribe and Thom are represented by Michael Angelovich and Austin Tighe of Nix Patterson & Roach LLP and Robert F. Saint-Aubin of Saint-Aubin Chtd.

The case is BP America Inc. et al. v. Yerington Paiute Tribe et al., case number 3:17-cv-00588, in the U.S. District Court for the District of Nevada.

--Editing by Jill Coffey.