IN THE COURT OF APPEALS
STATE OF ARIZONA

CHRISTOPHER COOK and LEIDRA COOK	)	Court of Appeals
	)	Division One
	)	No. 1 CA-CV 07-0110
Plaintiffs/Appellants,	)	
	)	Mohave County
v.	)	Superior Court
	)	No. CV-2005-0646
AVI CASINO ENTERPRISES, INC., a corporation; IAN DODD; JUAN MEJIA; STEPHANIE SHAIK; DEBRA PURBAUGH,	)	
Defendants/Appellees.	)	

OPENING BRIEF OF THE APPELLANT

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III. STATEMENT OF THE CASE

This action arises from an automobile/motorcycle collision in Mohave County, Arizona, at approximately 5:00 AM on May 25, 2003. The automobile was driven by a cocktail waitress employed by the Avi Resort & Casino who had worked on the evening/early morning of May 24/25, 2003. She became intoxicated at the casino, still in her cocktail uniform, while being served drinks by Casino co-employees who knew she was intoxicated.

At about 4:45 AM, using a Casino shuttle van, a Casino employee drove the cocktail waitress to her personal car in the Casino parking lot. Moments later, the cocktail waitress drove her car toward Bullhead City, crossed the centerline on eastbound Aztec Road in Mohave County, and struck a motorcyclist who was driving from Bullhead City to the Los Angeles area for his workday at the California Highway Patrol. At the time of the collision, the automobile driver had at least a .247 blood alcohol level. The motorcycle driver suffered catastrophic personal injuries, including the loss of his left leg at the hip, in the collision.

Plaintiff motorcycle driver and his spouse commenced this action, alleging statutory and common law dram shop liability, dram shop liability under a tribal alcohol ordinance, and negligence. All Defendants except the driver of the automobile (who is separately represented) moved to dismiss pursuant to Ariz. R. Civ. P. 12(b)(1)(2)(5) and (6), asserting that the Superior Court lacked personal

and subject matter jurisdiction, claiming tribal sovereign immunity based on an allegation that the Casino is owned by the Ft. Mojave Indian Tribe and the collision occurred on the reservation.

Plaintiffs opposed the motion to dismiss and filed a counter-motion seeking jurisdictional discovery. Based solely on the complaint and pleadings filed on the motion to dismiss, the trial court granted the motion to dismiss, without addressing the motion seeking jurisdictional discovery. This appeal ensues.

IV. FACTS RELEVANT TO ISSUES PRESENTED FOR REVIEW

1. Avi Casino Enterprise, Inc. is a commercial, for-profit corporation that is a separate and distinct legal entity from the Fort Mojave Indian Tribe. (Record @ Volume 1, Document 1, page 2; Volume 2, Document 20, Exhibit 2, cited hereafter as "R1-1 at p. 2; R2-20 at Exhibit 2").

2. The articles of incorporation of Avi Casino Enterprise, Inc. were executed in Mohave County, Arizona. (R2-20, at Exhibit 2).

3. Avi Casino Enterprise, Inc. owns and operates the Avi Resort & Casino and does substantial business in Arizona. (R1-1, at pp. 2, 4; R2-20, at p. 3 and Exhibit 3).

4. Avi Casino Enterprise, Inc. employs 645 people, 500 of whom are non-Indian and a majority of whom live in Arizona. (R2-20, at p. 4 and Exhibit 1).

5. Approximately 69% of the reservation is within Arizona. (R1-1 at p. 2; R2-20 at Exhibit 1).

6. The Avi Resort & Casino belongs to the Kingman, Arizona Chamber of Commerce. (R2-20, at p. 4 and Exhibit 4).

7. The Avi Resort & Casino belongs to the Bullhead City, Arizona Chamber of Commerce. (R2-20, at p. 4 and Exhibit 5).

8. The Avi Resort & Casino has been continuously operated for more than 12 years, since February 1995. (R2-20, at p. 4 and Exhibit 1).

9. Avi Casino Enterprise, Inc. is a member of the Arizona Indian Gaming Association. (R2-20, at p. 5 and Exhibit 11).

10. A member of the board of directors of Avi Casino Enterprise, Inc. served as treasurer of the Arizona Indian Gaming Association. (R2-20, at p. 5 and Exhibit 12).

11. Avi Casino Enterprises operates a fully interactive website through which Arizona residents can play on-line casino games, check room availability, make and pay for hotel reservations, check "player's club" accounts, contact the hotel for information, reserve a space in the RV park, take a virtual tour of the golf course and reserve a tee time, buy movie tickets, and check job openings and get an employment application. (R2-20, at pp. 3-4 and Exhibit 3).

12. The Avi Casino & Resort sits on Nevada-Arizona border. Ingress and egress to and from the casino passes through Mohave County, Arizona along Arizona State Highway 95 and Mohave County-maintained Aztec Road. (R1-1, at p. 4 and R2-20, at Exhibit 13).

13. Avi Casino Enterprise, Inc. provides specific driving directions to the casino from Kingman, Arizona on its interactive website. (R2-20, at p. 6 and Exhibit 3).

14. The Avi Resort & Casino operates a shuttle bus that takes its patrons to and from the Bullhead City, Arizona airport. (R2-20, at p. 4 and Exhibit 6, ¶19).

15. The collision that completes the tort that gives rise to this action occurred on Aztec Road in Mohave County, Arizona. (R1-1, at 1, 3, 6; R2-20, at p. 5 and Exhibit 14).

16. Aztec Road is maintained, at least in part, by Mohave County, Arizona. (R2-20, at p. 5 and Exhibit 13).

17. Ian Dodd was employed by Avi Casino Enterprise, Inc. and resides in Mohave Valley, Arizona. (R1-1, at pp. 2, 3; R2-20, at p. 5).

18. Andrea Christensen was employed by Avi Casino Enterprise, Inc. and resides in Bullhead City, Arizona. (R1-1, at pp. 2, 3; R2-20, at p. 5).

19. Debra Purbaugh was employed by Avi Casino Enterprise, Inc. and resides in Mohave Valley, Arizona. (R1-1, at pp. 2, 3; R2-20, at p. 5).

20. Juan Mejia and Stephanie Shaik were employed by Avi Casino Enterprise, Inc. and lived in Needles, California, but had substantial contacts within the state of Arizona. (R1-1, at p. 2; R2-20, at p. 5).

21. Chris Cook was employed as a Motor Carrier Specialist for the California Highway Patrol. On May 23 and May 24, 2003, Chris Cook was visiting his mother-in-law at her home in Bullhead City, Mohave County, Arizona, to help her with home repairs and to pick up his motorcycle, which had been left there on an earlier visit. (R1-1, at pp. 2, 3; R2-20, at p. 5-6).

22. At about 4:30 AM on May 25, 2003, Chris Cook left his mother-in-law's house in Bullhead City for his job in Orange, California, driving his 1982 Honda motorcycle. Cook headed south from Bullhead City on Arizona Highway 95, then across the Fort Mojave Indian Reservation on Aztec Road, within Mohave County, Arizona, toward I-40. (R1-1, at pp. 2, 3, 6; R2-20, at p. 6 and Exhibit 13).

23. Dodd, Mejia, Shaik, Purbaugh and Christensen were working at the Avi Casino on the night of May 24 and early morning hours of May 25, 2003. (R1-1, at pp. 2-4; R2-20, at p. 6).

24. On May 24/25, 2003, Dodd was Manager On Duty, and Purbaugh and Christensen were working as cocktail waitresses. (R1-1, at p. 4; R2-20, at p. 6).

25. During the late night/early morning hours of May 24/25, a casino-sponsored birthday party was held at the Avi casino for Mark Gates, a casino

employee. The party centered around a casino bar that was under the direct supervision and control of Dodd, where Purbaugh and Christensen worked as cocktail waitresses. After her shift, Christensen, while still wearing her cocktail waitress uniform, attended the party. (R1-1, at p. 4; R2-20, at pp. 6-7).

26. At some point during the birthday party, Dodd told a bartender that drinks were "on the house." During the party, Purbaugh served alcoholic beverages to Christensen, some purchased and some "comped" (provided for free) by the casino. (R1-1, at p. 4, R2-20, at p. 6).

27. During the party, Christensen became very intoxicated, and that intoxication was very apparent to everyone who saw her, including Dodd and Purbaugh. Despite Christensen's intoxicated condition, Avi employees continued to serve her more alcohol. By 4:30 AM on May 25, 2003, Christensen's blood alcohol level was at least .250%. (R1-1, at pp. 4-5; R2-20, at p. 7 and Exhibit 14).

28. At the time of these events, the Avi Resort & Casino operated a shuttle bus that took employees from the casino to their cars in an employee parking lot. Casino employees using the parking lot necessarily traveled on and across Arizona highways to enter, exit and use the parking lot. (R1-1, at p. 5; R2-20, at p. 7).

29. At approximately 4:30 AM on May 25, 2003, Christensen boarded the casino's shuttle bus and was taken to her car. While she was at the boarding area,

it was very apparent that Christensen was far too intoxicated to safely driver her car. (R1-1, at p. 5; R2-20, at p. 7).

30. Despite being aware of Christensen's obviously-intoxicated condition, and knowing that she intended to drive across Arizona highways to her home in Arizona, the casino shuttle driver picked Christensen up and took her to her car, thereby enabling and causing Christensen to drive on Arizona highways while under the influence of alcohol to a degree that rendered her incapable of safely operating a motor vehicle. (R1-1, at p. 5; R2-20, at p. 7).

31. The policy of Avi Casino Enterprises, Inc. was that, when casino customers were intoxicated to the degree that Christensen was then intoxicated, the casino arranged to take customers home or to provide them lodging until they were able to drive safely. Accordingly, delivering Christensen to her car at the time and place described violated this policy. (R1-1, at p. 5; R2-20, at p. 7).

32. It was then actual practice for the Casino to allow intoxicated employees to become intoxicated at the casino, at discounted liquor prices or for free, and then to allow or encourage those casino employees to drive on and across Arizona state highways to their homes in Arizona. (R1-1, at p. 6; R2-20, at p. 7).

33. At about 4:45 A.M. on May 25, 2003, Christensen, while still wearing her employee uniform, drove out of the parking lot of the Avi Casino onto Aztec Road in Mohave County, Arizona. Christensen was then under the influence of

alcohol to a degree that rendered her incapable of safely driving her car. (R1-1, at p. 6; R2-20, at p. 8).

34. Moments later, Christensen drove her car across the centerline along Aztec Road in Mohave County, Arizona, resulting in a near head-on collision with the motorcycle driven by Chris Cook. (R1-1, at p. 6; R2-20, at p. 8).

35. Chris Cook suffered grievous, near-fatal, and catastrophic personal injuries in the collision, including the loss of his left leg at the hip. As the direct and proximate result of the collision and the physical injuries sustained therein, Chris Cook has incurred medical bills in excess of $1,000,000, which continue to accrue, and he has suffered devastating psychological and emotional injuries, permanent scarring and disfigurement, and loss of enjoyment of life. (R1-1, at p. 6; R2-20, at p. 8).

36. Avi Casino Enterprise, Inc. also owns and operates the Spirit Mountain Casino in Mohave County, Arizona. (R2-20, at p. 4 and Exhibit 7).

37. The Spirit Mountain Casino exists by virtue of, is permitted to operate, and conducts its business, pursuant to a compact with the State of Arizona. (R2-20, at p. 4 and Exhibit 8).

38. The Spirit Mountain Casino has 260 slot machines and includes a sports bar and additional gaming space. (R2-20, at p. 4 and Exhibit 9).

39. Avi Casino Enterprise, Inc. operates a golf driving range, a miniature golf course, and a 125-space RV (recreational vehicle) resort at the Spirit Mountain Casino. (R2-20, at p. 4 and Exhibit 9).

40. The Spirit Mountain Casino has been continuously operated in Mohave County, Arizona for more than 11 years, since April 1995. (R2-20, at p. 4 and Exhibit 7).

41. Avi Casino Enterprise, Inc. maintains a Mohave County, Arizona telephone number of 928-346-2000 and a Mohave County, Arizona fax number of 928-346-2007 for the Spirit Mountain Casino. (R2-20, at p. 4 and Exhibit 9).

42. Avi Casino Enterprise, Inc. pays a percentage of its net winnings from the Spirit Mountain Casino to various State of Arizona health care, education, tourism and wildlife conservation funds. (R2-20, at p. 4 and Exhibit 10).

V. STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Does Avi Casino Enterprise, Inc. a for-profit corporation organized under a tribal corporation law to operate a resort-casino, have tribal sovereign immunity?

2. Are Avi Casino Enterprise, Inc. and its employees subject to personal jurisdiction in Mohave County, Arizona?

3. Are Plaintiffs below entitled to conduct discovery of jurisdictional facts before the trial court rules on personal jurisdiction?

VI. ARGUMENT

The trial court's order dismissing claims under Rule 12 for lack of personal and subject matter jurisdiction presents a question of law that is subject to *de novo* review. *Rashedi v. General Board of the Church of the Nazarene*, 203 Ariz. 320, 324, 54 P.3d 349, 352 (App. 2003), citing *Hughes v. Creighton*, 165 Ariz. 265, 267, 798 P.2d 403, 405 (App. 1990). The same *de novo* standard applies to the trial court's *sub silentio* refusal to allow jurisdictional discovery prior to the grant of a motion to dismiss for lack of personal jurisdiction.

discovery motion abuse of discretion

Avi Casino Enterprise, Inc., as a tribal corporation and not an Indian tribe, does not have sovereign immunity. Because the tribal corporation has no immunity, its employees cannot be immune. Thus, the trial court erred in finding that the Appellees were immune from suit.

Avi Casino Enterprise, Inc. has engaged in substantial *and* continuous and systematic activity in Arizona such that general jurisdiction in state court in Mohave County is constitutionally permissible. Once general jurisdiction is present, it is immaterial whether the claims at issue arise out of Avi's contacts with Arizona. Even if general jurisdiction is not present, there is a sufficient nexus between the Avi Casino's contacts with Arizona and the claims asserted by Plaintiffs below to warrant the exercise of specific jurisdiction. Thus, the trial court erred in finding that it lacked personal jurisdiction of Appellees.

When a Court's jurisdiction is challenged, a plaintiff is entitled to conduct discovery to gather and present jurisdictional facts. Thus, the trial court erred in denying *sub silentio* Appellants' motion seeking jurisdictional discovery.

For each and all of these reasons, the trial court's judgment should be reversed and Appellants should be permitted to litigate their claims in the Superior Court of Mohave County.

1. The Facts Alleged In Plaintiffs' Complaint And Opposition To Motion To Dismiss Must Be Taken As True.

The trial court's order and judgment do not indicate whether the court accepted as true the allegations of the complaint and the facts set forth in Appellants' opposition to Appellees' motion to dismiss. Given the posture of the case below, however, all of Appellants' factual allegations must be taken as true. *Logan v. Forever Living Productions Intern, Inc.,* 203 Ariz. 191, 52 P.3d 769 Ariz. 2002); *Vega v. Morris,* 183 Ariz. 526, 905 P.2d 535 (App. Div. 1, 1995). When considering a motion to dismiss, the trial court must assume the truth of the allegations in the complaint and dismiss only if the plaintiff is not entitled to relief under any facts alleged in the complaint. *Id.*

Thus, the factual predicate set forth in Section IV above---derived from Appellants' complaint and from their opposition to Appellees' motion to dismiss---must be assumed as true for purposes of this appeal. In fact, Appellants'

opposition below was supported, to the extent possible without jurisdictional discovery, by well-founded exhibits, as specifically cited in Section IV above.

2. The Trial Court Erred In Finding That A Tribal Corporation And Its Employees Have Sovereign Immunity.

Dixon v. Picopa Construction Co., 160 Ariz. 251, 772 P.2d 1104 (1989), and a number of analogous federal authorities compel reversal of the trial court's recognition of tribal sovereignty in this case. In *Dixon*, an employee of a tribal corporation, driving a company dump truck while working on a tribal corporation construction job, rear-ended a driver who later brought suit in the Superior Court of Maricopa County. The Salt River Pima-Maricopa tribe made arguments identical to those made here by Avi Casino Enterprise: (a) the tribal corporation and its employees are protected by sovereign immunity and (b) service of process was ineffective because Arizona's service of process laws have no force or effect within the boundaries of an Indian reservation.

In rejecting both arguments, the Arizona Supreme Court expressly noted the same fact pattern as is present in the instant case: (1) the tribal corporation was incorporated as a *separate entity* to engage in *commercial activity*; (2) the tribal corporation was engaged in the construction business and not in the functions of

tribal government; and (3) the tribal corporation had insured itself against liability.[1] Based on these findings, the Court concluded that the tribal corporation was not a "subordinate economic organization" of the tribe and, therefore, was not entitled to tribal immunity.

The Court reasoned that none of the historical rationale for recognizing sovereign immunity had application when a tribal corporation was created to do business and not to advance Indian culture:

> "Policies protective of tribal cultural autonomy and self-determination also remain unhindered by permitting jurisdiction here. Picopa's charter shows that it was established for purely commercial reasons and not in any effort to promote, develop, or protect the Community's culture. Cultural autonomy survives. *See* Note, *supra,* 88 COLUM. L. REV., at 186-87. Neither is the Community's self-determination imperiled by our assertion of jurisdiction. This private action based on an off-reservation tort does not in any fashion limit the Community's powers nor the manner in which it exercises those powers. *See id.* at 187-88. In contrast, the federal government's policy promoting commercial dealings between Indian tribes and non-Indians is furthered by withholding immunity in this case. We realize that, here, Dixon did not voluntarily become involved with Picopa, but we believe that an Indian corporation's successful assertion of immunity, even in a negligence case, may deter persons or entities from entering into contractual relationships with that Indian corporation or any other Indian corporation. Non-Indians

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[1] As noted in the trial court and not contested by Appellees, Avi's counsel has represented to Plaintiffs' counsel that Avi maintains liability insurance that provides coverage to the Avi Casino Resort and its employees for this loss, therefore, neither the assets of the trial nor tribal self-government are at risk.

> will undoubtedly think long and hard before entering into business relationships with Indian corporations that are immune from suit."[2]

160 Ariz. at 258, 772 P.2d at 1111.

Appellants respectfully submit that this reasoning carries *far* greater impact in the context of a full-on casino/resort business---and in the economic realities of the year 2007---than it did in the construction trade of nearly twenty years ago.

Almost a decade before *Dixon*, federal courts had held that tribal corporations---as opposed to Indian tribes themselves---were separate and distinct legal entities that did not possess tribal sovereign immunity.

The distinction between tribal corporations and tribes was clearly explained in *R.C. Hedreen Company v. Crow Tribal Housing Authority*, 521 F. Supp. 599 (D. Montana, 1981). In *Hedreen*, pursuant to a Crow Tribal Ordinance, the Crow Tribe of Montana established the Crow Tribal Housing Authority, a tribal corporation. The Crow Tribal Housing Authority contracted with Hedreen, a

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[2] The Supreme Court also rejected the "insufficiency of service of process" argument, holding that Arizona's long-arm statute made Rule 4 applicable to service on Indian reservations, reasoning that, if a state court has subject matter jurisdiction over a claim against an Indian, service in Indian country by a private server is valid:

> "Providing they have subject matter jurisdiction, if Arizona courts have power to authorize service of Arizona civil process in foreign countries, *see* Rule 4(e)(6), surely they have power to extend service of Arizona civil process to defendants located on Indian reservations."

160 Ariz., at 260, 772 P.2d at 1113.

Washington (state) construction firm, to build houses on the Crow Indian Reservation in Montana. A dispute arose over non-payment under the contract.

Hedreen sued the Crow Tribal Housing Authority and the tribal corporation moved to dismiss, arguing that the Housing Authority was a public body created by the Crow Tribe and, as such, was not subject to suit. In rejecting that argument, the trial court reasoned that the Crow Tribe and the Crow Tribal Housing Authority were separate and distinct entities that existed for different reasons and were, therefore, subject to different legal treatment:

> "The tribe is immune from suit as a result of its sovereign status, thus the tribe as an entity is not a citizen for diversity purposes. The Housing Authority was established as a corporate entity pursuant to Tribal Ordinance 64-17 so that the tribe could deal effectively as a business entity in the commercial community. That it has done; it hardly lies in its mouth to deny its existence as a commercial corporation with its principal place of business within the state of Montana."

521 F. Supp. at 602.

The court went further to explain both the logical and practical reasons for treating a tribal *government* differently than a tribal *corporation*:

> "Both common sense and the legal practicalities of the commercial world dictate a contrary result. Regardless of the sovereign source from which a corporate entity derives its charter, when it is constituted with all of the required formalities it comes into existence as a legal entity. As a legal entity, it is susceptible to suit on its contracts in any court of competent jurisdiction unless it enjoys some legal excuse, e.g., sovereign immunity.

> While the court recognizes that an Indian tribe is not a citizen of the state of Montana, it is not a tribe that is being sued."

521 F. Supp. at 603.

Many other federal cases apply the same rationale---and reach the same result--- rejecting the extension of tribal sovereign immunity to tribal corporations. *Gaines v. Ski Apache*, 8 F.3d 726 (10th Cir. 1993), citing *Enterprise Elec. Co. v. Blackfeet Tribe of Indians*, 353 F. Supp. 991 (D. Mont. 1973); *R.J. Williams Company v. Fort Belknap Housing Authority*, 719 F.2d 979, 982 (9th Cir. 1983); *R.C. Hedreen Company v. Crow Tribal Housing Authority*, 521 F. Supp. 599, 602 (D. Montana, 1981); *Stock West, Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1226 (9th Cir. 1989), citing *Iowa Mutual Ins. Co. v. LaPlante*, 480 U.S. 9, 107 S.Ct. 971, 94 L.Ed.2d 10 (1987); *Parker Drilling Company v. Metlakatla Indian Community*, 451 F. Supp. 1127 (D. Alaska 1978); *Namekagon Development Co. Inc. v. Bois Forte Reservation Housing Authority*, 395 F. Supp. 23, 29 (D. Minn. 1974), aff'd. 517 F.2d 508 (8th Cir. 1975).

Parker Drilling, as the instant case, is a tort action. The *Parker* Court's language examined the use of tribal corporations as a mechanism for promoting the federal policy of establishing economic equality for tribes. In *Parker,* a plane struck a snow berm at an airport owned and operated by a tribal corporation that operated an aviation enterprise. Plaintiff sued the tribal corporation and the

defendant moved to dismiss, arguing that it was not a "citizen" of any state and, therefore, could not be sued. In rejecting that argument, the *Parker* court first commented on the practical commercial rationale for declaring tribal corporations to be "citizens," thereby subjecting such corporations to jurisdiction in federal courts:

> "[I]t is unlikely that a prospective customer would feel comfortable entering a business office or using a corporate product if the corporation were immune from tort liability. Only with the potential imposition of tort liability are Indian corporations truly equal, regardless of the desirability of certain aspects of that status."

451 F. Supp. at 1137.

These principles are reiterated in *Namekagon*---which was cited by the Arizona Court in *Dixon*. *Namekagon* involved a breach of contract by a tribal corporation that had been created to build housing on a reservation. After first recognizing that tribal corporations were created for the economic advancement of tribal members---and that only the assets of tribal corporations and not the assets of tribes themselves---were at risk in tribal corporate enterprises, the *Namekagon* court explained the commercial necessity for rejecting sovereign immunity:

> "The Reservation Business Committee purported to create an independent corporation which would be legally responsible for its promises. It invited outsiders to do business with it on a contractual basis, and the corporation promised the plaintiff over one million dollars in compensation. As was said by another Court in a related context:

> * * It is repugnant to the American theory of sovereignty that an instrumentality of the sovereign shall have all the rights and advantages of a trading corporation, and the ability to sue, and yet be itself immune from suit, and able to contract with others, or to injure others, confident that no redress may be had against it as a matter of right * * *."

Namekagon, supra, 395 F. Supp. at 29.

Appellees below relied heavily on a 2006 decision of Division Two in *Filer v. Tohono O'Odham Nation Gaming Enterprise*, 212 Ariz. 167, 129 P.3d 78 (App. Div. 2, 2006). On close reading, *Filer* provides no logical support for a sovereign immunity argument, because the case was decided on dispositively different legal grounds. Specifically, in *Filer*, "The parties [did] not dispute that the Gaming Enterprise, as a subordinate economic enterprise of the Tohono O'odham Nation, is entitled to the same immunity as the Nation." 212 Ariz. at 169, 129 P.3d at 80. (Emphasis added).

Instead, the dispositive issue in *Filer* was whether the tribal gaming corporation's acquisition of a state of Arizona liquor license or the tribe's adoption of an alcohol ordinance was a waiver of sovereign immunity, either implicitly or by operation of law. In other words, the critical legal distinction between a tribal corporation and a Tribe was not raised, briefed, argued or decided in *Filer*.[3] Here,

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[3] A copy of the Appellant's Opening brief in *Filer* is attached in an Appendix hereto for the Court's information.

there is no *evidence* supporting a claim that the Appellee corporation is a "subordinate economic enterprise."

Thus, it appears to be well-settled law, at the Arizona Supreme Court and in other jurisdictions that have considered the issue, that tribal corporations---as distinguished from Indian tribes---do not possess tribal sovereign immunity. The reasons for this rule, whether expressed by state or federal courts, are consistent across the case law, and are summarized as follows.

First, it would be fundamentally unfair to allow the tribes to create corporations that can compete and derive income in the general commercial marketplace, while, at the same time, giving those corporations immunity from exposure to the legal liability that all other competitors in the marketplace must face. Second, tribal cultural autonomy, tribal self-determination, and tribal self-government are not affected by requiring that purely commercial enterprises bear legal responsibility for civil wrongs. Third, tribal corporations that engage in the general commercial marketplace can, and do, buy liability insurance to mitigate their risks of civil liability. Fourth, the existence of immunity may deter third persons from doing business with tribal corporations and, thereby, act counter to the federal government's policy of promoting commerce between tribal corporations and non-Indians.

Each and all of these reasons apply to the instant case. The Appellee tribal corporation competes vigorously in the non-Indian Colorado River basin gaming and resort industry. Permitting the casino to generate millions of dollars in tourist revenue without having to incur the ordinary and necessary costs of risk assessment, management and mitigation---due to immunity from legal liability---would create a significant competitive advantage for Avi and a corresponding competitive disadvantage for all other casino resorts in the same market.

It seems a foregone conclusion that, if the Avi Casino were forced to survive on a customer base consisting only of the 1120 members of the Fort Mojave Tribe, and could not attract the millions of tourists who frequent the Colorado River resorts---because tourists knew they would have no legal recourse if injured by the negligence of casino employees---the economic benefit of the casino to the tribe would be lost. That loss would defeat the federal government's goal of integrating Indian and non-Indian commerce, at least for the Fort Mojave Indian Tribe.

Requiring the tribal corporation to defend negligence or contract claims arising from the operation of the Avi Casino will not affect tribal culture or cultural freedom in any way. Neither will accepting liability for civil wrongs affect the right or ability of the Fort Mojave Tribe to govern itself or of the Tribe's members to exercise self-determination. Indeed, Appellee corporation has---in *this* very case---purchased liability insurance that is providing its defense, indeed, even

paying for the prosecution of the instant motion to dismiss. The Tribe is not, and will not be, adversely affected by having appropriate legal accountability for the mainstream economic benefits generated by its commercial gaming and resort operation. Indeed, according to its own representations, agriculture is the basis for the Fort Mojave economy,[4] so even the Tribe itself does not consider the Avi casino central to tribal autonomy.

The Arizona Supreme Court concluded twenty-seven years ago in *Dixon* that imposing civil liability would not cause the Salt River Pima-Maricopa Indian Community tribe to fall into economic ruin---and the passage of time has shown that decision to have been correct. *Dixon* did not cause a loss or alteration of the Tribe's cultural identity or affect the Tribe's right of self-governance. To the contrary, *Dixon* simply acknowledged the integration of the Tribe into mainstream Arizona commercial reality. Indeed, since *Dixon* was decided, the Salt River Pima-Maricopa Indian Community has built and opened <u>two</u> new casinos of its own in the Greater Phoenix area.

There is no basis---either in current law or in current commercial reality---to extend tribal sovereign immunity to tribal commercial corporations.

3. <u>Appellants Made A *Prima facie* Showing of General Personal Jurisdiction</u>.

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[4] See R2-20, at Exhibit 1.

Arizona has extended jurisdiction under its long-arm statute to the maximum extent permitted by the United States Constitution's limits on due process. *Meyers v. Hamilton Corp.,* 143 Ariz. 249, 251, 693 P.2d 904, 906 (1984). At the pleadings stage, as in the instant case, a plaintiff need only make a *prima facie* showing of personal jurisdiction. *A. Uberti and C. v. Leonardo,* 181 Ariz. 565, 892 P.2d 1354 (Ariz. 1995).

General personal jurisdiction subjects defendants to suit on virtually all claims, regardless of whether the cause of action relates to a defendant's activities in Arizona, and exists when a defendant has "substantial" or "continuous and systematic" contacts with Arizona. *In re Consolidated Zicam Product Liability Cases,* 212 Ariz. 85, 127 P.3d 903 (Ariz. App. Div. 1, 2006). Where general personal jurisdiction exists, the absence of a nexus between the foreign corporation's contacts in the forum state and the specific acts giving rise to the cause of action---i.e., the presence of specific jurisdiction---is immaterial. *Ex parte Lagrone*, 839 So.2d 620 (Ala. 2002). (Emphasis added).

Substantial activity is conduct that, when considered collectively, shows a general course of business activity for pecuniary benefit. *Sculptchair, Inc. v. Century Arts, Ltd.,* 94 F.3d 623, 627 (11th Cir. 1996). "Continuous and systematic contacts" include the presence of agents or employees within the state, the presence of real or personal property within the state, and the presence of offices

within the state. *Batton v. Tennessee Farmers Mut. Ins. Co.*, 153 Ariz. 268, 270, 736 P.2d 2, 4 (1987).

No specific requirements for assertion of general jurisdiction have been adopted in Arizona. The "continuous and systematic" activity rule announced in *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437, 72 S.Ct. 413 (1951), was based upon directors' meetings, correspondence, banking, stock transfers, payment of salaries, and purchasing equipment in the forum state being found sufficient to confer general jurisdiction in Ohio over a South American mining corporation. *Perkins* was reaffirmed in *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 104 S.Ct. 1473 (1984), where circulation of magazines in the forum state was sufficient to confer general jurisdiction in a libel action brought in New Hampshire by a New York resident against an Ohio corporation.

General jurisdiction has also been found to arise from:

- direct advertising and solicitation of residents of the forum state. *Anthem Ins. Companies, Inc. v. Tenet Healthcare Corp.*, 730 N.E.2d 1227 (Ind. 2000)
- "any continuing corporate presence in the forum state directed at advancing the corporation's objectives." *AMAF International Corp. v. Ralston Purina Co.*, 428 A.2d 849 (D.C. 1981)

- a "foreign corporation [being] present and conducting substantial business" in the forum state. *State ex rel. K-Mart Corp. v. Holliger,* 986 S.W.2d 165, 167 (Mo. 1999)
- a corporation 1) operating charter flights into and out of the forum state over a three-year period; 2) flying a plane into and out of the forum state nine times over fifteen months; 3) conducting business and deriving revenue from business into and out of the forum state; 4) buying equipment from sellers in the forum state; 5) performing consulting services in the forum state; 6) entering equipment service contracts with vendors in the forum state; and 7) marketing, distributing, and selling products in the forum state. *Northwestern Aircraft Capital Corp. v. Stewart,* 842 So.2d 190, (Fla.App. 5 Dist. 2003)
- income from a foreign corporation being generated in and distributed from the forum state, pursuant to a franchise agreement in the forum state, where the foreign corporation was in continuous communication with personnel working in the forum state. *Spomer v. Aggressor Intern, Inc.,* 807 So.2d 267 (La.App. 1 Cir. 2001).

Recent personal jurisdiction cases focus on the growing use of interactive websites on the Internet. Courts have followed a sliding scale approach, with general jurisdiction being dependent on the nature and quality of commercial

activity conducted over the Internet. *Edias Software Int'l., LLC v. Basis Int'l., Ltd.*, 947 F.Supp. 413, 417 (D. Ariz. 1996). At the "jurisdiction *is* found" end of the spectrum are defendants clearly doing business over the Internet by entering contracts that involve the knowing and repeated transmission of information over the Internet. *CompuServe, Inc. v. Patterson,* 89 F.3d 1257 (6th Cir. 1996). At the "jurisdiction *not* found" end are defendants that have simply posted information on an Internet website that is accessible to users in foreign jurisdictions, but in a passive way that does no more than make information available to those interested. *Bensusan Restaurant Corp. v. King,* 937 F.Supp. 295 (S.D.N.Y. 1996). The middle ground involves interactive websites where a user can exchange information with a host computer---the exercise of jurisdiction is determined by examining the level of interactivity and commercial nature of the information exchange that occurs on the website. *Maritz, Inc. v. Cybergold, Inc.,* 947 F.Supp. 1328 (E.D. Mo. 1996).

The U.S. Supreme Court has said that the essence of the general jurisdiction test, at the constitutional level, is one of general fairness to the foreign corporation. *Keeton,* supra. The Arizona Supreme Court has examined "general fairness" in the context of (a) the burden on defendant, (b) the interests of the forum state, (c) the plaintiff's interest in obtaining relief, (d) the judicial system's interest in efficient resolution of controversies, and (e) the state's shared interest in furthering

fundamental substantive social policies. See *Batton*, supra, citing *Asahi Metal Industry Co. v. Superior Court of Cal., Solano Cty.*, 480 U.S. 102, 107 S.Ct. 1026, 94 L.Ed.2d 92 (1987), supra, and *World-Wide Volkswagen*, 444 U.S. at 292, 100 S. Ct. at 564-65. The reason for these requirements is to prevent assertion of jurisdiction based on "random, isolated, or fortuitous" contacts with Arizona.

Here, even without any jurisdictional discovery, it is clear that the gaming and resort contacts of Avi Casino Enterprise, Inc. with the state of Arizona, and particularly with Mohave County, Arizona are anything but "random, isolated or fortuitous." Instead, in the language of the personal jurisdiction cases, Avi's activities are "purposeful" and are "directed at" Arizona, and demonstrate that Avi clearly "avails itself of the privileges and benefits of doing business in Arizona." See, generally, *Keeton v. Hustler Magazine, Inc.*, supra.

The presently known facts---and it is believed that jurisdictional discovery will disclose many, many more---clearly demonstrate a course of business activity, for pecuniary benefit, in Arizona, using real and personal property and employees within Arizona. For example:

- Avi continuously and extensively advertises in Arizona, and markets its goods and services to Arizona residents.
- Approximately 500---over 75%---of Avi's employees are non-Indian and more than half live in Arizona.
- Avi operates a fully interactive website on which Arizona residents can play on-line casino games, book and pay for hotel rooms, reserve spaces in the RV park

and reserve tee times on the golf course, buy movie tickets, get employment information and check job openings, and communicate with the casino.

- Avi shuttles customers back and forth between the Bullhead City, Arizona airport and the Avi casino.
- Avi is a member of the Kingman, Arizona Chamber of Commerce.
- Avi is a member of the Bullhead City, Arizona Chamber of Commerce.
- Avi's articles of incorporation were executed in Mohave County, Arizona.
- Avi has continuously operated in the Bullhead City marketplace since February 1995.
- Dodd was employed by Avi and resides in Mohave Valley, Arizona.
- Christensen was employed by Avi and resides in Bullhead City, Arizona.
- Purbaugh was employed by Avi and resides in Mohave Valley, Arizona.
- Avi operates a casino on Arizona Highway 95 in Mohave Valley, Arizona.
- Avi's Mohave Valley casino operates pursuant to a compact with the State of Arizona.
- Avi operates a golf driving range, a miniature golf course, and a 125-space RV resort in Mohave Valley.
- Avi maintains a Mohave County, Arizona telephone number of 928-346-2000 and fax number of 928-346-2007.
- Avi pays a percentage of its net winnings to various State of Arizona health care, education, tourism and wildlife conservation funds.
- Avi participates in the Arizona Indian Gaming Association.
- An Avi corporate director served as treasurer of the Arizona Indian Gaming Association, whose offices are in Phoenix, Arizona.

- Approximately 69% of the Ft. Mojave reservation is within the state of Arizona.
- The Fort Mojave Indian Tribe is a member of the Inter Tribal Council of Arizona, Inc., an organization comprised of nineteen Arizona Indian tribes with offices in Phoenix, Arizona.

When only these presently-known contacts are "considered collectively," as *Sculptchair* suggests, it seems beyond fair argument that twelve years ago, as part of its business design and plan, Avi purposefully, deliberately and *very substantially* injected itself into the Arizona marketplace---and has continued to do so to this date. It seems beyond *any* question that, as a gaming licensee pursuant to a compact entered with the State of Arizona, Avi has "purposefully availed itself of the benefits and protections of the laws" of Arizona---and continues to do so to this date. It seems too apparent to even argue that Avi has developed many and various, continuous and systematic contacts with and within Arizona over a 11-year period---all for purposes of receiving the pecuniary benefit of the lucrative Arizona market---and that it continues to reap those benefits to date.

Avi can hardly argue that it faces a substantial burden by being required to litigate in Mohave County, Arizona---Avi operates a thriving casino/sports bar/RV park/miniature golf course/driving range in Mohave County, Arizona. Thus, the only burden of litigating in Mohave County is simply the burden of litigation, and that burden is probably less in Mohave County, Arizona than it is anywhere else.

Avi cannot argue that Arizona does not have an interest in preventing drunk driving by Arizona residents in Arizona-registered vehicles on Arizona roadways, or in enforcing the state's statutory and common law relative to such misconduct. Certainly, Arizona has an ever-increasing interest in efficiently resolving controversies such as this one, particularly as the already-invisible line that defines Indian country vanishes even further into history. To be sure, the goal of all concerned is to integrate, not segregate, the Indian people into 21st century commercial America, so that the Indian people can benefit from the good fortune of all.

Based on this record alone, Appellants met their burden to make a *prima facie* showing that Appellees are subject to general personal jurisdiction in the Superior Court of Mohave County. If the record requires more, for the reasons shown in Section VI. 5. below, Appellants should be entitled to conduct jurisdictional discovery to gather further facts that will demonstrate the substantial, continuous and systematic contacts that Appellees have, and have had for at least 12 years, with persons, merchants and entities, private and governmental, in the state of Arizona.

Once general jurisdiction is shown to exist, the specific jurisdiction analysis becomes immaterial. *Ex parte Lagrone,* supra. Appellants respectfully submit that

such is the case. Nonetheless, specific jurisdiction is also present, as will be next shown.

4. Appellants Made a *Prima facie* Showing of Specific Personal Jurisdiction.

Specific jurisdiction exists when a defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws. *Hanson v. Denckla,* 357 U.S. 235, 253, 78 S. Ct. 1228, 1239-40, 2 L.Ed.2d 1283 (1958). In Arizona, specific jurisdiction is proper where (1) a defendant purposefully avails itself of the privilege of conducting business in Arizona; (2) the claim arises out of or relates to the defendant's contact with Arizona; and (3) the exercise of jurisdiction is reasonable. *Williams v. Lakeview Co.,* 199 Ariz. 1, 13 P.3d 280 (Ariz. 2000).

The analysis of specific jurisdiction is highly equitable and is fact-specific. *Brown v. General Brick Sales Co., Inc.,* 39 S.W.3d 291 (Tex.App.-Fort Worth, 2001). Specific jurisdiction is determined on a case-by-case basis. *Alto Eldorado Partnership v. Amrep,* 138 N.M. 607, 124 P.3d 585 (N.M.App. 2005); *Blakey v. Continental Airlines, Inc.,* 164 N.J. 38, 751 A.2d 538 (N.J. 2000); *Leventhal v. Harrelson,* 723 So.2d 566 (Ala. 1998); *Beaudoin v. South Texas Blood & Tissue Center,* 699 N.W.2d 421 (N.D. 2005); *Benjamin v. KPMG Barbados,* 2005 WL 995589 (Ohio App. 10 Dist. 2005); *Liaquat Khan v. Van Remmen, Inc.,* 325 Ill.App.3d 49, 756 N.E.2d 902 (Ill.App. 2 Dist. 2001).

In the trial court, Appellees relied exclusively on *Williams v. Lakeview,* supra---a dram shop case arising from a casino in the greater Las Vegas marketplace---to contravene the assertion of specific personal jurisdiction. However, because specific jurisdiction analysis is fact-specific and determined case-by-case, and because the critical operative facts in the instant case are so different than those in *Williams,* Appellees exclusive reliance is misplaced.

In the instant case, it is specifically known that Andrea Christensen, an Arizona resident, was the immediate cause of Chris Cook's injuries. In *Williams*, it was unknown who or how many persons were alleged to have overserved the drunk driver, or whether they were Nevadan(s), Californian(s) or Arizonan(s). Thus, in the instant case, there is a direct nexus between one of several joint tortfeasors and the forum state, Arizona---where there was none in *Williams.*

In *Williams,* all of the allegedly tortious misconduct occurred entirely in Nevada. In the instant case, the tort occurred in Arizona where the final injury-causing act took place. Thus, in the instant case, there is a direct nexus between the location of specific tortious conduct and the forum state, Arizona---where there was none in *Williams*.

In the instant case, Avi knew that its employee was from Arizona, and knew its employee would return home across Arizona roadways when she left the casino. In *Williams*, there is no suggestion that the defendant casino had any idea who the

intoxicated patron was or where he lived. Thus, in the instant case, there is a direct nexus between Defendant's/Appellee's actual knowledge of its intoxicated agent/employee's destination and the forum state, Arizona---where there was none in *Williams*.

In the instant case, Avi knew that, at 4:30 AM after an hours-long party, its intoxicated employee was leaving the premises, was doing so by car, and that she would drive across twenty miles of Arizona roadways to get home. In *Williams*, there is no suggestion that the casino had any knowledge that the plaintiff was leaving or where he was going when he left. Thus, the instant case, there is a direct nexus between the Defendant's actual knowledge of the specific hazard it had created and *where it was sending that hazard* and the forum state, Arizona---where there was none in *Williams*. This last point is critical, because it does not depend on some sense of constructive or theoretical foreseeability, which seems to be a focal point for specific jurisdiction arguments.

Based on the extensive historical and continuing commercial contacts between Appellees and the state of Arizona, as described in the preceding section, Appellants have certainly made a *prima facie* showing that (a) Appellees purposefully availed themselves of the privilege of doing business in Arizona, and (b) the exercise of jurisdiction over Appellees is reasonable---such that Appellees should suffer no surprise or undue burden from having to litigate this matter in

Mohave County, Arizona. For these reasons, the first and third prongs of the specific jurisdiction test are satisfied.

The remaining question is the second prong, the nexus between the instant claim and Appellees' contacts with the state of Arizona. That nexus is present. More than half of Avi's workforce lives in Arizona and, by logical inference, must necessarily drive across Arizona highways to get to and from work at the Avi Casino. Defendant Christensen, an Arizona resident, whom Avi knew to be a resident of Bullhead City, Arizona, is one such employee. That employee, (a) while wearing Avi's business uniform, (b) having not left Avi's workplace after finishing her work shift, (c) when leaving Avi's place of business, (d) after a party given at Avi's casino, (e) at which Avi's alcohol was served in excess,(f) by Avi's employees, (g) after being taken to her car by an Avi employees, (h) drove across Arizona highways toward the home in Bullhead City where Avi knew she lived.

Thus, even the limited record below is a continuous, uninterrupted, logical series of facts that draw a *prima facie* causal connection between Avi's contacts with Arizona and the claims asserted by Appellees in this case. *Williams* does not compel a different result. The case law requires a highly equitable, fact-specific, and case-by-case analysis of specific jurisdiction. In both equity and law, the analysis in this case should result in a finding that specific jurisdiction is present.

5. The Trial Court Erred In Refusing To Permit Jurisdictional Discovery.

When jurisdiction is challenged, the court may take evidence and resolve factual disputes essential to disposition of the jurisdictional issues. *Gatecliff v. Great Republic Life Insurance Company,* 154 Ariz. 502, 744 P.2d 29 (Ariz. App. Div. 1, 1987). The United States Supreme Court has held that, where an issue arises as to jurisdiction, discovery is available to ascertain the facts bearing on that issue. *Oppenheimer Fund, Inc., v. Sanders*, 437 U.S. 340, 351, n.13, 98 S.Ct 2380, 2389, n. 13, 57 L.Ed.2d 253 (1978).

In response to a motion to dismiss, courts routinely permit limited jurisdiction discovery. *Doe v. Unocal Corp.*, 248 F.3d 915, 921 (9th Cir. 2001); *Eaton v. Dorchester Dev., Inc.*, 692 F.2d 727, 729 (11th Cir. 1982); *Washington v. Norton Manufacturing Co.*, 588 F2d 441, 443 (5th Cir. 1979); 4 Moore, Federal Practice, Para. 26.56[6]. A trial court should not grant, or even rule on, a motion to dismiss for lack of personal jurisdiction under Rule 12(b)(2) without giving the plaintiff an opportunity to conduct limited jurisdictional discovery. *United States v. Swiss American Bank, Ltd.,* 274 F.3d 610, 625 (1st Cir. 2001); *GTE New Media Services, Inc. v. BellSouth, Corp.*, 199 F.3d 1343, 1351-52, (D.C. Cir. 2000); *Massachusetts School of Law at Andover, Inc., v. American Bar Association*, 107 F.3d 1026, 1042 (3d Cir. 1997).

If a plaintiff presents factual allegations that suggest with reasonable particularity the possible existence of contacts between a defendant corporation

and the forum state, a plaintiff's request to conduct jurisdictional discovery should be granted. *Mellon Bank (East) PSFS, Nat'l Ass'n v. Farino,* 960 F.2d 1217, 1228 (3d Cir. 1992). See also, *W. Africa Trading & Shipping Co., et al. v. London Int'l Group, et al.,* 968 F.Supp. 996, 1001 (D.N.J. 1997) (denying defendant's motion to dismiss where plaintiff requests jurisdictional discovery to determine whether the court can exercise personal jurisdiction over the defendant).

Here, the known facts clearly suggest that jurisdictional discovery would reveal many additional facts showing substantial, systematic and continuous contacts between Appellee and Arizona that would support the assertion of general jurisdiction. Appellants presented the trial court "with particularity" a list of items that jurisdictional discovery would be expected to reveal, and it was error for the trial court to reach a decision on jurisdiction before allowing discovery on those items.

By way of example only, it is known that all vendors doing more than $10,000 per month in business with a casino that operates under an Arizona gaming compact must be certified by the state. (See R2-20, at Exhibit 15). Thus, it is reasonably expected that discovery related to "certified vendors" would reveal the names, locations and amounts of regular business that Avi does with suppliers in Arizona.

In addition, all individuals that work in a casino that operates under an Arizona gaming compact must be certified by the state. (See R2-20, at Exhibit 16) Thus, it is reasonably expected that discovery related to employees would reveal clear evidence as to how much of Appellee corporation's workforce resides in Arizona. Appellee corporation's employment application (See R2-20, at Exhibit 17) also requests residence information, therefore, it is reasonably expected that discovery directed at employment statistics would determining these employment facts.

Because it is known that Avi casino operates under a liquor license issued and supervised by Clark County, Nevada (See R2-20, at Exhibit 18), it is reasonably expected that Avi's Mohave Valley casino operates under a similar license from Mohave County, Arizona and/or the state of Arizona. Discovery is necessary concerning that fact, which will show yet another continuing and systematic business contact with Arizona, including without limitation information about the probable substantial purchase of alcoholic beverages from an Arizona vendor.

Because it is known that more than half of Avi's employees reside in Arizona (See R2-20, at Exhibit 1), it is expected that Avi makes regular and continuing "automatic deposits" into the Arizona bank accounts of its employees. It also seems quite likely that the tribal corporation itself does some or all of its

banking business with one or more Arizona banking institutions. Thus, it is reasonably expected that discovery will reveal the nature, scope and frequency of these contacts with Arizona.

Because it is presently known that the Avi Resort & Casino is heavily marketed in the Phoenix area and via the Internet, it is reasonably expected that discovery would reveal the full extent of the business done directly with customers via Internet, as well as business and agency relationships that exist between Avi and Arizona-based travel agents, tour companies, advertising agencies and the like, all of whom participate, and have participated over 12 years, in filling the gaming tables, hotel rooms, restaurants, RV parks and golf courses of both Spirit Mountain Casino and Avi Casino.

Based only on these known facts, it is reasonable to expect that discovery would generate material facts going to proof of both general and specific personal jurisdiction. Appellants' motion seeking jurisdictional discovery was not a mere fishing expedition. For this reason, the trial court erred in granting Appellees' motion to dismiss without permitting jurisdictional discovery.

VII. CONCLUSION

As a matter of law, under *Dixon* and a host of federal authorities, Avi Casino Enterprise, Inc., as a commercial corporation and not an Indian tribe, does not have

sovereign immunity. Because the tribal corporation has no immunity, its employees cannot be immune.

Avi has engaged in substantial *and* continuous and systematic activity in Arizona such that general jurisdiction exists in state court in Mohave County, and requiring Avi to answer in the Superior Court is both constitutionally permissible and generally fair. Accordingly, Appellants need not show specific jurisdiction---that their claims arose out of the Appellees' contacts with Arizona. However, even if such a showing is required, there is *prima facie* evidence of a sufficient nexus between the Avi's contacts with Arizona and the claims asserted by Appellants to warrant the exercise of specific jurisdiction.

For each and all of these reasons, the trial court erred in granting Appellees' motion to dismiss and in denying *sub silentio* Appellants' motion seeking jurisdictional discovery. The trial court's order and judgment should be reversed and the matter should be litigated in the Superior Court. Alternatively, the trial court's order should be vacated and the matter should be remanded with directions to permit Appellants to conduct discovery to gather jurisdictional facts before Appellees' motion is determined.

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Respectfully submitted this 26 day of March, 2007.

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