TRIBAL OPIOID LITIGATION

— February 2021 Update —

JULIE COMBS AND **AILA HOSS**[1]

INTRODUCTION

The opioid use disorder and overdose crisis in the United States has proven especially harmful to Tribal Nations and their citizens. The Centers for Disease Control and Prevention found that Native American overdose deaths increased by 500% from 1999 to 2015.[2] In 2017, American Indians and Alaska Natives had the second highest rates of opioid-related deaths as compared to other racial/ethnic groups.[3]

A variety of factors have contributed to the increase in opioid use disorder and opioid-related overdoses across the U.S. generally[4] and among Native communities specifically.[5] However, predatory marketing, over-prescribing, and over-distribution of prescription opioids by manufacturers, distributors, doctors, and pharmacies is well-documented and has contributed to opioid-related overdoses in Tribal communities. In response, many Tribal Nations have filed hundreds of lawsuits in federal, state, and Tribal courts to seek compensation for the harm caused to Tribal governments and their citizens by the malpractices of these entities. The majority of these suits are joined in the national opioid multi-district litigation (MDL) in the Northern District of Ohio, while other Tribes have pursued treaty-rights claims and other claims against these entities apart from the MDL.

“The litigation demonstrates that Tribes are distinct, sovereign entities who have been uniquely harmed by the opioid use disorder and overdose epidemic and as sovereign nations.”

To understand the basis for many of the claims in various Tribal opioid lawsuits, it is important to understand Tribal sovereignty and the parameters which the U.S. judicial system has imposed on Tribal sovereignty over hundreds of years. This issue brief begins with a short overview of Tribal sovereignty and federal Indian law. Next, this brief describes how the Tribal involvement in opioid litigation to seek compensation from responsible entities in the national opioid MDL, Tribal courts, and through treaty rights claims, has increased in the past five years. The litigation demonstrates that Tribes are distinct, sovereign entities who have been uniquely harmed by the opioid use disorder and overdose epidemic and as sovereign nations. It also highlights that Tribes are a necessary party to the larger discussion concerning the enormous harm done by prescription opioid manufacturers, distributors, and pharmacies.

TRIBAL NATIONS AND FEDERAL INDIAN LAW

There are 574 federally recognized Tribes that maintain stewardship and authority over their land and people as distinct sovereigns. In addition, there are numerous other state-recognized and non-recognized Tribes that exercise inherent authority over the health and welfare of their people as part of their sovereign right "to make their own laws and be ruled by them."[6] Tribal sovereignty is recognized by federal law but is not created by it. Sovereignty is an inherent authority that Tribes have been exercising since time immemorial.[7] Rich Tribal traditions have established health resiliencies by incorporating cultural practices into their public health practice.[8] These traditions have been undermined by the unique web of federal law and policy which the United States relies upon to navigate its government-to-government relationship with federally recognized Tribes.[9]

The legal relationship between Tribes and the federal government is governed by federal Indian law and includes the federal government's duty to address health disparities and provide sufficient health care to Tribal Nations.[10] Federal Indian law has not served to reinforce the Tribes' ability to care for their lands and people but has, in fact, served as a direct obstacle to Tribal public health practice because Congress's plenary power to legislate on any matter concerning American Indians and Alaska Natives.[11] Congressional plenary power allows the federal government to preempt nearly all Tribal authority or treaty-guaranteed rights so long as there is congressional authorization.[12]

A foundational principle of federal Indian law is that, generally, the jurisdiction of the Tribes extends over their lands and people and states do not have jurisdiction on Tribal lands.[13] Tribal jurisdiction over non-Tribal members on Tribal lands is confined to situations where the non-member conduct "threatens or has some direct effect on the political integrity, the economic security, or the health and welfare of the tribe."[14] This principle runs with force through some of the Tribal opioid litigation. Though federal Indian law has directly limited Tribal authority to combat public health crises by limiting Tribal jurisdiction, Tribal authority to assert jurisdiction over non-Tribal members is much stronger when combatting a public health crisis of such magnitude as the opioid use disorder and overdose epidemic.[15]

PRESCRIPTION OPIOID MANUFACTURER AND DISTRIBUTER LITIGATION

In response to the opioid use disorder and overdose crisis within their jurisdictions, Tribal, state, and local governments have brought lawsuits against prescription opioid manufacturers and distributors generally on the ground that the misconduct of these entities has necessitated government spending of billions of dollars to resolve this crisis in their communities, and these defendants should reimburse the plaintiffs' spending.[16] Professor Nicolas P. Terry, Executive Director of the Hall Center for Law and Health at Indiana University, explains that these lawsuits have two essential components: "[f]irst, [that] the manufacturers overstated the benefits and downplayed the risks of the use of their opioids while aggressively marketing them (the overpromotion claim); and second, that the distributors failed to monitor or detect suspicious orders (the diversion claim)."[17] These two components—overpromotion and diversion—appear in briefs filed by Tribes against opioid defendants.

> **"Some Tribes have taken a distinctly different approach of relying instead on treaty rights guaranteed to protect against bad actors like opioid manufacturers."**

The majority of Tribal opioid litigation tracks this basic theory and its components, but some Tribes have taken a distinctly different approach of relying instead on treaty rights guaranteed to protect against bad actors like opioid manufacturers. This issue brief provides an overview of the different litigations including Tribal involvement in the opioid MDL, suits brought based on treaty clauses, and suits brought in Tribal courts.

TRIBAL INVOLVEMENT IN MDL 2804 NATIONAL PRESCRIPTION OPIATE LITIGATION

The largest litigation addressing the opioid use disorder and overdose crisis is MDL 2804, In re National Prescription Opiate Litigation. The MDL is comprised of over 2,000 individual actions brought by Tribal, state and local governments against a group of pharmaceutical manufacturers, distributors, and pharmacies.[18] An MDL is a special procedure by which federal civil cases with similar question(s) of fact are transferred to one court to conserve judicial resources and, hopefully, lead to equitable and efficient outcomes in similar cases. The judicial panel selected the Northern District of Ohio as the forum for the opioid MDL, in part because Ohio has been hit particularly hard by opioid deaths.[19]

On June 4, 2018, a separate track was approved in the opioid MDL for all federally recognized Tribes and a special master was appointed to work with the Tribes to develop a Case Management Order.[20] In October of 2018, 448 federally recognized Tribes filed an amicus brief opposing the defendant manufacturers, distributors, and pharmacies' Motion to Dismiss in favor of the two Tribal Track "bellwether" cases, discussed more fully below.[21] In November of 2019, Judge Dan Polster, the District Court judge overseeing the opioid MDL, who selected a few cases to "test" in his court, selected others for remand, to be tried in other courts as part of what he has deemed a "hub-and-spoke" strategy.[22] The Northern District of Ohio will remain the "hub" of the opioid MDL and the "locus for global settlement," and the other courts will serve as "spokes," all of which will help accelerate a resolution to the MDL.[23]

1. **THE MDL REACHES INDIAN COUNTRY**

The opioid litigation has generated widespread action among Tribal Nations across the country, which is reflected in the numerous federal and state court petitions that the Tribes have filed against opiate manufacturers, distributors, and pharmacies. Many of the complaints allege damages in the form of costs of establishing new Tribal resources such as treatment and rehab services, welfare and foster care for children whose parents suffer from opioid-related illnesses, and law enforcement resources. Still others, such as the Bay Mills Indian Community's complaint against Purdue Pharma et al., note that the defendants' actions have also "created a palpable climate of fear, distress, dysfunction, and chaos among Tribal residents" and that the Tribe itself has suffered damages in "the form of lost opportunity for growth and self-determination."[24]

The Standing Rock Sioux Tribe in North Dakota filed a suit in 2018 and is now also joined in the MDL after years of free-flowing opiate distribution on the reservation. Records show that from 2006 to 2014 the supply of pills per capita doubled on the Standing Rock Sioux Reservation, compared to a national increase of only 30%.[25] The McKesson Corp., named in the Standing Rock suit as well as many other suits in the MDL, was responsible for supplying opiates to Standing Rock, handling nearly 80% of the opioids shipped to Indian Health Service facilities nationwide from 2006 to 2014.[26] The 102-page complaint Standing Rock filed in the federal court is similar to other Tribal complaints and accuses defendants of, among other acts, marketing prescription opioids fraudulently, failing to comply with federal prescription drug laws, and violating federal RICO laws.[27] Standing Rock joins hundreds of other Tribes hoping for a speedy resolution of the MDL in the form of a payout to affected Tribes.

2. **THE CHEROKEE NATION CASE**

The only case brought by a Tribal Nation recommended for remand to the panel as a "spoke" by Judge Polster was Cherokee Nation v. McKesson Corp. et al.[28] The case was originally brought by the Cherokee Nation in Cherokee Nation District Court in 2017 against McKesson Corporation, Cardinal Health, Amerisource Bergen, CVS, Walgreens, and Walmart, alleging that the companies had neglected their legal duty to monitor their supply chains when they flooded the Cherokee Nation with prescription opioids.[29]

According to reports from Centers for Disease Control and Prevention, opioid-related deaths in the Cherokee Nation doubled between 2003 and 2014 and the Nation alleges that more than 800 million milligrams of opioids were distributed annually in the 14 county boundaries of the Nation.[30] The 2017 case filed in the Cherokee Nation Court asserted claims of nuisance, negligence, unjust enrichment, and civil conspiracy, among other claims.[31] Defendant distributors and pharmaceutical companies then filed suit in the Northern District of Oklahoma, challenging the Tribal court's jurisdiction over the matter.[32] On January 9, 2018, the Northern District of Oklahoma found the Cherokee Nation did not allege activities rising to the standard of activity that "threatens or has some direct effect on the political integrity, the economic security, or the health and welfare of the tribe,"[33] because none of the alleged conduct was "specifically directed at the Cherokee Nation or its members."[34]

The finding that Cherokee Nation did not have Tribal court jurisdiction over the matter was a blow to Tribal sovereignty because it limited a sovereign nation's ability to exercise civil jurisdiction over its own opioid case and, consequently, protected the huge corporations who flooded Cherokee Nation territory with opioids to the detriment of Cherokee citizens.[35] The Northern District of Oklahoma partially relied upon the notion that the Nation would have a choice of avenue after it was denied Tribal court jurisdiction.[36]

Despite the Nation's efforts to keep the case out of federal court, when the Nation joined with the State of Oklahoma in the Oklahoma state court, the Northern District of Ohio removed the action to the MDL, and ultimately, Judge Polster's order remanded Cherokee Nation to the Eastern District of Oklahoma as it was "the consensus pick of the Indian Tribe leadership committee" to serve as one of the three "spoke" cases of Judge Polster's "hub-and-spoke" plan.[37] So far, the court has not ruled on pending motions to dismiss brought by the opiate distributors and pharmacies but has approved an amended Case Management Order which states that the parties must finalize all discovery and file summary judgment motions by December of 2021 with an expected trial date after the new year.[38]

3. THE "HUB" BELLWETHER'S: MUSCOGEE (CREEK) NATION AND BLACKFEET TRIBE OF MONTANA

While the Cherokee Nation's case was selected to be the Tribal remand case, the Muscogee (Creek) Nation (MCN) and Blackfeet Tribe cases were selected to be the two bellwether Tribes in the North District of Ohio as the two Tribal demonstration cases.[39] The results of these two "bellwether" cases on the "Tribal Track" in the MDL will then hand down resolutions to similar cases with other Tribes.[40] Other Tribal Nations signed on to an amicus brief to show support for the two "bellwether" Tribes and further explain the distinct impact opioids have had on Native communities across the country.[41] The amicus brief represents around 78% of all federally recognized Tribes in the U.S.

"The amicus brief represents around 78% of all federally recognized Tribes in the U.S."

At the opening arguments on October 21, 2019, MCN argued that Tribal Nations are not to be forgotten in the MDL. MCN Attorney General Dellinger stated to Judge Polster "[t]his devastation comes on top of centuries of displacement, oppression, and neglect, all of which together make addressing the opioid epidemic in our remote communities that much more challenging."[42] As the Tribal Track cases proceed to trial, these unique harms experienced by Tribes as a result of opioid manufacturers' and distributors' actions are likely to be at the forefront of motion practice and settlement negotiations by Tribal leaders.

4. SETTLEMENT NEGOTIATIONS

The COVID-19 pandemic has, unfortunately, delayed the opioid MDL and its "spoke" cases as trial dates have continued to be postponed.[43] The defendants are unlikely to push for a settlement without the pressure of a looming trial, and courts are hesitant to host a trial virtually due to the massive scale of opioid litigation. The argument has even been raised that settlements should not move forward in the throes of a pandemic when many of the defendants are the very entities developing vaccines and serving in other capacities to help end the crisis.[44] Still, plaintiffs, including Tribes, are pushing on, hoping to see negotiations continue and a settlement reached without delay.

TREATY RIGHTS: CHEYENNE ARAPAHO "BAD MEN" SUIT

> **"This treaty provides that "if bad men among the whites, or among other people subject to the authority of the United States... commit any wrong upon the person or property of the Indians" then the government will both expel the offender and reimburse the victim for the harms they sustained."**

Not all Tribes have taken the approach of joining the opioid MDL. For example, in 2020, the Cheyenne and Arapaho Tribes brought suit against the United States asserting claims under the "bad men among the whites" clause of the Treaties of Medicine Lodge and Fort Laramie.[45] This treaty provides that "if bad men among the whites, or among other people subject to the authority of the United States…commit any wrong upon the person or property of the Indians" then the government will both expel the offender and reimburse the victim for the harms they sustained.[46] The Cheyenne and Arapaho pursued an argument in the Court of Federal Claims that under the "bad men" clause, they should be reimbursed by the United States for wrongful acts of "corporate pharmaceutical opioid manufacturers, distributors, and their agents" who caused harm to the Tribe via a "civil conspiracy" to produce opioid addiction in individuals "within the economic proximity of the Tribe," including the Tribal community.[47]

On December 9, 2020, the Court of Federal Claims dismissed the Tribes' suit, in part because it found the Tribes failed to meet the "elements" of a "bad men" claim with its argument of harm by "Opioid Bad Men" with "economic proximity" to the Tribal community.[48] In walking through the elements of the treaty claim, the court borrowed frequently from its prior decisions and found that a corporate entity, like an opioid manufacturer, is not cognizable as a "bad man."[49] Further, the court determined the "wrong" the Tribes alleged the "Opioid Bad Men" committed did not rise to the standard of prior case law pertaining to "bad men" clauses which held that the "wrong" must rise to the criminal level and includes only on-reservation wrongs and off-reservation wrongs that arose on the reservation.[50] Though the Tribes argued the "Opioid Bad Men" activities had a direct "economic proximity" to Tribal lands, the court was unconvinced and found that this was not a close enough connection to wrongs occurring on Tribal lands.[51]

> **"Treaty rights can be a potent mechanism by which Tribes can defend their lands and people from harm, but courts are not always sympathetic to such arguments."**

Though unsuccessful in asserting the "bad men" claims, the Cheyenne and Arapaho Tribes' suit indicates a creative way for the Tribal Nations to fight opioid manufacturers, distributors, and pharmacies in court. Treaty rights can be a potent mechanism by which Tribes can defend their lands and people from harm, but courts are not always sympathetic to such arguments.

CONCLUSION

The ongoing Tribal opioid litigation symbolizes how Tribal governments have protected their land and people from outside harm since time immemorial. Though federal law has constrained Tribal authority and jurisdiction, principles of Tribal sovereignty remain in force as a powerful weapon to combat illegal activities, such as those of opioid manufacturers, distributors, and pharmacies, as the result of which the vast majority of Tribes have suffered grave harm. Through the Tribal Track MDL and other suits including treaty-rights claims, Tribes are exercising their sovereign right to protect their people and governments from further damage as a result of this broad crisis sweeping across Tribal lands as distinct from other local and state governments.

1 Julie Combs (Cherokee Nation), JD Candidate 2021, President (2019-2020), Native American Law Student Association; Aila Hoss, JD, Assistant Professor of Law, Native American Law Center, University of Tulsa College of Law. This research was completed with support from the Great Lakes Inter-Tribal Epidemiology Center, Great Lakes Inter-Tribal Council. This issue brief reflects the views of the authors and does not represent the views of GLITC.

2 Native American overdose deaths surge since opioid epidemic, AP (March 14, 2018), https://apnews.com/article/81eb3ae-96c2b4f6aae272ec50f0672d2.

3 "Opioids," Indian Health Service (2020), https://www.ihs.gov/opioids/data/#:~:text=According%20to%20the%20most%20recent,ethnic%20groups%20in%20the%20US.

4 See, e.g., MJ Zoorob and JL Salemi, Bowling alone, dying together: The role of social capital in mitigating the drug overdose epidemic in the United States, 173 Drug Alcohol Depend, 1-9 (Apr. 1, 2017), 210.1016/j.drugalcdep.2016.12.011. Epub 2017 Jan 25. PMID: 28182980; Nabarun Dasgupta et al., Opioid Crisis: No Easy Fix to its Social and Economic Determinants, 108 Am. J. Of Pub. Health 182 (2018).

5 See, e.g., Native Cultures, NIH, https://heal.nih.gov/news/stories/native-cultures; Maria Yellow Horse Brave Heart and Lemyra DeBruyn, The American Indian holocaust: Healing historical unresolved grief, American Indian and Alaska Native Mental Health Research (1998).

6 "Indian Entities Recognized," Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs (Jan. 30, 2020), https://www.federalregister.gov/documents/2020/01/30/2020-01707/indian-entities-recognized-by-and-eligible-to-receive-services-from-the-united-states-bureau-of; Williams v. Lee, 358 U.S. 217, 271 (1959).

7 N.J. Newton et al. eds., Cohen's Handbook of Federal Indian Law, § 4.01 (2012).

8 Aila Hoss, and Heather Tanana, Upholding Tribal Sovereignty and Promoting Tribal Public Health Capacity During the COVID-19 Pandemic (July 31, 2020). Burris, S., de Guia, S., Gable, L., Levin, D.E., Parmet, W.E., Terry, N.P. (Eds.) (2020). Assessing Legal Responses to COVID-19. Boston: Public Health Law Watch, University of Utah College of Law Research Paper No. 391, Available at SSRN: https://ssrn.com/abstract=36759400

9 See, e.g., R.J. Miller, The History of Federal Indian Policies (Mar. 17, 2010) available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1573670.

10 M.L.M. Fletcher, Federal Indian Law (2016) at § 3; Hoss, Aila, COVID-19 and Tribes: The Structural Violence of Federal Indian Law (August 14, 2020). Arizona State Law Journal Blog, Forthcoming, Available at SSRN: https://ssrn.com/abstract=3674261 or http://dx.doi.org/10.2139/ssrn.3674261

11 Ex Parte Crow Dog, 109 U.S. 556, 572 (1883); United States v. Kagama, 118 U.S. 375, 384-85 (1886).

12 Id.

13 N.J. Newton et al. eds., Cohen's Handbook of Federal Indian Law § 7.02 (2019).

14 Montana v. United States, 450 U.S. 544 (1981).

15 Aila Hoss and Heather Tanana, Upholding Tribal Sovereignty and Promoting Tribal Public Health Capacity During the COVID-19 Pandemic (July 31, 2020). Burris, S., de Guia, S., Gable, L., Levin, D.E., Parmet, W.E., Terry, N.P. (Eds.) (2020). Assessing Legal Responses to COVID-19. Boston: Public Health Law Watch, University of Utah College of Law Research Paper No. 391, Available at SSRN: https://ssrn.com/abstract=3675940

16 Micah L. Berman, Using Opioid Settlement Proceeds for Public Health: Lessons from the Tobacco Experience, 67 Kansas L. Rev. 1029, 1033 (2019), https://kuscholarworks.ku.edu/bitstream/handle/1808/29336/Berman_2019_UsingOpioid.pdf?sequence=1&isAllowed=y.

17 Nicolas P. Terry, The Opioid Litigation Unicorn, 70 S.C. L. Rev. 637, 639 (2019).

18 See Mem. Op. Certifying Negotiation Class at 1, In re Nat'l Prescription Opiate Litig., (No. 1:17-MD-2804) (N.D. Ohio Sept. 11, 2019), ECF No. 2590.

19 Colin Dwyer, Your Guide to the Massive (And Massively Complex) Opioid Litigation, NPR (Oct. 15, 2019), https://www.npr.org/sections/health-shots/2019/10/15/761537367/your-guide-to-the-massive-and-massively-complex-opioid-litigation.

20 Order re: Reassigning Workload, In re Nat'l Prescription Opiate Litig., No. 1:17-md-02804-DAP (N.D. Ohio June 4, 2018).

21 Brief Amici Curiae of 448 Federally Recognized Tribes in Opposition to Defendant's Motions to Dismiss Tribal Claims, id. (Oct. 5, 2018).

22 Suggestions of Remand, id. (Nov. 19, 2019).

23 Id.

24 Complaint, Bay Mills Indian Community v. Purdue Pharma L.P. et al., No. 1:17-md-2804, at *3 (N.D. Ohio Apr. 19, 2019), https://www.indianz.com/News/2019/04/23/141110055587.pdf.

25 Keegan Hamilton, How a Pharma Giant Flooded the Standing Rock Sioux Reservation with Opioids, Vice (July 30, 2020), https://www.vice.com/en/article/889deg/how-a-pharma-giant-flooded-the-standing-rock-sioux-reservation-with-opioids.

26 Id.

27 Robins Kaplan LLP Represents Standing Rock Sioux Tribe in Legal Battle Against Opioid Industry, Robins Kaplan (Feb. 13, 2018), https://www.robinskaplan.com/resources/news/2018/02/robins-kaplan-llp-represents-standing-rock-sioux-tribe-in-legal-battle-against-opioid-industry.

28 Suggestions of Remand, supra note 22.

29 Cherokee Nation v. McKesson Corp, et al., No. 1-18-OP-45695-DAP (N.D. Ohio), originally No. 6:18-CV-0056 (E.D. Okla.).

30 Cherokee Nation opioid lawsuit remanded to federal court in Oklahoma, Muskogee Phoenix (Feb. 14, 2020), https://www.muskogeephoenix.com/news/cherokee-nation-opioid-lawsuit-remanded-to-federal-court-in-oklahoma/article_7d55ff10-88a5-55d1-8fe4-f78d1c51648a.html.

31 Petition, Cherokee Nation v. McKesson, et al., No. CV-2017-203 (Cherokee Nation Dis. Ct. Apr. 20, 2017), https://turtletalk.files.wordpress.com/2017/04/petition-4-20-17.pdf.

32 McKesson Corp. v. Hembree, No. 17-CV-323-TCK-FHM, 2018 U.S. Dist. LEXIS 3700, (N.D. Okla. Jan. 9, 2018).

33 See Montana v. United States, supra note 14.

34 Id. at *21-30.

35 See Matt Irby, The Opioid Crisis in Indian Country: The Impact of Tribal Jurisdiction and the Role of the Exhaustion Doctrine, 43 Am. Indian L. Rev. 353 (2019), https://digitalcommons.law.ou.edu/ailr/vol43/iss2/3

36 McKessonCorp.v.Hembree, No.17-CV-323-TCK-FHM,2018WL340042,at*11 (N.D. Okla. Jan. 9, 2018).

37 Suggestions of Remand, supra note 22.

38 Amended Case Management Order, Cherokee Nation v. McKesson, No. CIV-18-056-RAW-SPS (E.D. Okla 2021).

39 Muscogee (Creek) Nation presents statement in Consolidated Opioid suit in federal court in Cleveland, Ohio, Muscogee (Creek) Nation (Oct. 22, 2019), https://www.mcn-nsn.gov/muscogee-creek-nation-presents-statement-in-consolidated-opioid-suit-in-federal-court-in-cleveland-oh/

40 See The Muscogee (Creek) Nation v. Purdue Pharma L.P., et al. No. 1:18-op-45459, and The Blackfeet Tribe of The Blackfeet Indian Reservation v. AmerisourceBergen Drug Corporation, et al. No. 1:18-op-45749.

41 Brief Amici Curiae of 448 Federally Recognized Tribe in Opposition to Defendants' Motion to Dismiss Tribal Claims,No. 1:17-MD-02804-DAP, (N.D. Ohio Oct. 5, 2018).

42 Id.

43 Meryl Kornfield, Coronavirus stalls long-awaited day in court for historic opioid lawsuit, Washington Post (Dec. 26, 2020), https://www.washingtonpost.com/health/2020/12/26/coronavirus-opioid-trials/.

44 Id.

45 Cheyenne & Arapaho Tribes v. United States, No. 20-143, 2020 U.S. Claims LEXIS 2542 (Fed. Cl. Dec. 9, 2020).

46 Medicine Lodge Treaty, art. 1, Oct. 28, 1867, 15 Stat. 593 (1867).

47 Cheyenne, supra note 45 at *2.

48 Id. at *24-25.

49 Id. at *20.

50 Id. at *21.

51 Id.