Mestek v. Lac Courte Oreilles Community Health Center, --- F.4th ---, 2023 WL 4240807 (7th Cir., June 29, 2023).

- **Holding**: Tribal Health Center was an arm of the Tribe entitled to sovereign immunity in case brought by whistleblowing employee asserting wrongful retaliation under the False Claims Act.
- **Summary**: An employee of the Lac Courte Oreilles Tribal Health Center was fired after raising questions about alleged billing irregularities. The employee sued the Health Center and six individuals (five Center employees and an independent contractor) in federal court, lodging claims under the False Claims Act's anti-retaliation provision, 31 U.S.C. § 3730(h), and Wisconsin law. Citing tribal sovereign immunity, the district court dismissed all claims against the Health Center and its employees, and declined to exercise supplemental jurisdiction over the remaining state-law claims against the independent contractor.

  On appeal, the court quickly disposed of the assertion that the False Claims Act abrogated tribal sovereign immunity, finding that it was "not even a close call," given the lack of any explicit reference to "Indians" or "tribes," and the lack of any "catch-all" language including all "governmental units," as in *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*, 143 S. Ct. 1689, 1695 (2023).

  In determining whether the Health Center was an arm of the Tribe, and thus entitled to assert the Tribe's sovereign immunity, the court adopted the five factor test used by the 4th, 9th, and 10th Circuits, examining:

  1. the method of creation of the economic entity;
  2. its purpose;
  3. the structure, ownership, and management, including the amount of control the tribe has over the entity;
  4. the tribe's intent with respect to the sharing of its sovereign immunity; and
  5. the financial relationship between the tribe and the entity.

  The court took judicial notice of the Lac Courtes Oreille Tribal Code of Law, which contains provisions bearing on the relationship between the Health Center and the Tribe. As to the first and second factors, the Tribal Code of Law provided that the Health Center "is a public body established as a subordinate entity of the Tribe," and stated that the Center's purpose was to "improve the overall health of the Tribal community," establishing a "clear nexus" between the Center and the Tribe. Regarding the third factor, the court concluded that given the allegations in the complaint that it was the Center's director, and not the Tribal Governing Board, that fired Mestek, such factor "cuts against a conclusion that the Health Center acted as an arm of the Tribe." As to the fourth factor, the Tribal code stated expressly that no private lawsuit could be "maintained against the Tribe or any of its subordinate entities such as the LCO-CHC [the Health Center], unless the Tribe consents to the action." And, with regard to the fifth factor, neither the complaint nor the Tribal Code painted a clear picture of the financial ties between the Center and the Tribe. Nonetheless, the court concluded that "[c]onsidered in their totality, [the five] factors tip in support of the conclusion that the Health Center is an arm of the Tribe," and upheld the dismissal.

The court also upheld dismissal of all claims against the Center's employees, given that they were sued in their official capacities only, so that "any monetary relief would come from the Health Center's coffers," and reinstatement would require action on the part of the Health Center, not the individual defendants. The court also held it was within the discretion of the district court to decline to exercise supplemental jurisdiction over a state law claim against an independent contractor that was not barred by tribal sovereign immunity, given that no federal claim could proceed.

- **Relevant (2023) Deskbook Section**: 7:13, 7:20, 7:21