Lavallie v. Jay, 2021 ND 140, 963 N.W.2d 287 (2021)

- **Holding:** State court lacked jurisdiction over a personal injury claim brought against a tribal member for an accident occurring on off-reservation land held in trust for the alleged tortfeasor's tribe.
- **Summary:** This decision is the second arising from an accident that occurred on property leased by Defendant Jay. In the first decision, the supreme court, although retaining jurisdiction, remanded the matter to the district court for the purpose of making factual findings and a legal determination as to whether it possessed subject-matter jurisdiction over the tort claim. *LaVallie v. Jay*, 2020 ND 147, 945 N.W.2d 288 (2020), summarized at https://docs.google.com/document/d/10h6pHdWExcDIhgEEvHxOmt77u230l37U/edit. On remand,

  > the district court found Jay's home site "is located directly adjacent to the county road upon which the accident occurred" and "Jay makes a yearly lease payment on his property to the Bureau of Indian Affairs." It also found Jay has leased his property from the Bureau of Indian Affairs for twenty-five years. The court concluded, "Jay ha[d] established that he is an enrolled member of the Turtle Mountain Band of Chippewa Indians, and that the land upon which the county road runs at the location of this accident is land held in trust." The court also found Jay did not meet his burden to prove Lavallie and [Defendant] Charette are members of the Tribe. ... [¶] Because Jay did not prove all three parties were enrolled members of the Tribe, the court held it had subject matter jurisdiction over the matter."

  Given these facts, the supreme court disagreed and remanded with directions to dismiss the action for lack of subject-matter jurisdiction.

  The court held that "[t]here are two categories of claims over which the United States Supreme Court has held tribal courts have exclusive civil jurisdiction under the infringement test. Included in the first category are those claims in which a non-Indian asserts a claim against an Indian for conduct occurring on that Indian's reservation." The question here, therefore, was "whether Indian country includes the Tribe's trust land where the accident occurred." The court concluded that the trust land, which lay off reservation, was Indian country because, relying on *Oklahoma Tax Commissioner v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505 (1991), "[t]he status of the land where the accident occurred being held in trust validly sets it apart for use by the Tribe and its members."
- **Relevant (2021) Deskbook Sections:** 2:15 n.11; 6:11 n.15
- **Comment:** The court's conclusory discussion of the Indian country issue ignores the significant dispute over whether all off-reservation trust land falls within the scope of § 1151. The precise derivation of the trust land at issue here is not addressed—presumably because the court attributed to *Potawatomi* the rule that any off-reservation trust land constitutes Indian country.