



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**HWAL'BAY BA: J ENTERPRISES, INC. v.  
HON. JANTZEN/SARA & WILLIAM FOX  
CV-19-0123-PR**

**PARTIES:**

*Petitioner:* Hwal'Bay Ba: J Enterprises, Inc. d/b/a Grand Canyon Resort Corporation d/b/a Hualapai River Runners

*Real Parties in Interest:* Sara and William Fox

*Respondent Judge:* Hon. Lee F. Jantzen, Mohave County Superior Court

**FACTS:**

Petitioner, Hwal'Bay Ba: J Enterprises, Inc. d/b/a Grand Canyon Resort Corporation d/b/a Hualapai River Runners ("Corporation") is a tribal corporation wholly owned by the Hualapai Indian Nation ("Tribe"). The Corporation operates whitewater rafting tours on the Colorado River in the Grand Canyon.

This suit arises from Plaintiff Sara Fox's accident and subsequent evacuation during a one-day April 2016 whitewater rafting trip, which, Plaintiffs maintain, resulted in catastrophic injuries. Plaintiffs sued the Corporation and the Tribe alleging negligence, vicarious liability (respondeat superior), negligent hiring, negligent supervision, loss of consortium and punitive damages.

The Corporation and the Tribe (collectively, "Defendants") specially appeared and filed an answer and a motion to dismiss raising sovereign immunity.

Judge Jantzen conducted a hearing on the Defendants' motion to dismiss and entered an order dismissing the Tribe but denying the motion to dismiss the Corporation. The judge found that the recent U.S. Supreme Court case of *Lewis v. Clarke*, 137 S. Ct. 1285 (2017) was controlling. He determined that the Corporation's allegedly tortious conduct occurred off the reservation, and that an individual tribal member, even if working for the tribe, can be sued in an individual capacity and is not protected by sovereign immunity. The judge also denied a motion for reconsideration, finding that although a "subordinate economic entity" has the same protections as the tribe itself, he had already determined that Corporation was not a subordinate economic entity, and this lawsuit was not against the tribe and will not affect the tribe's property.

The Corporation brought a special action in the court of appeals which declined special action jurisdiction. The Corporation then filed a petition for review in the Supreme Court.

**ISSUES:**

1. Issues of sovereign immunity should be resolved at the earliest juncture in

litigation, as immunity is not a mere defense to liability, but from the rigors of litigation. Thus, a person or entity denied the benefits of immunity per se lacks an adequate remedy via appeal. Did the court of appeals abuse its discretion in declining special action jurisdiction, where [the Corporation] presented a pure question of law of statewide importance, and lacked no adequate remedy via appeal?

2. A subordinate economic organization of an Indian tribe is entitled to sovereign immunity, so long as the entity carries out governmental functions and is formed as a branch of tribal government. Is an entity that is tasked with the allocation and preservation of tribal resources, job creation, and economic development—and which has been held by the tribe’s highest court to be a constitutionally created subordinate economic organization—entitled to tribal sovereign immunity?

Definitions:

*Respondeat Superior* is a doctrine that parties are responsible for acts of their agents or employees.

*Sovereign Immunity* is a doctrine that prevents the government or its political subdivisions, departments, and agencies from being sued without its consent.

*Special Appearance* is appearance in a court that allows a party to argue its points but does not waive claims of sovereign immunity.

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