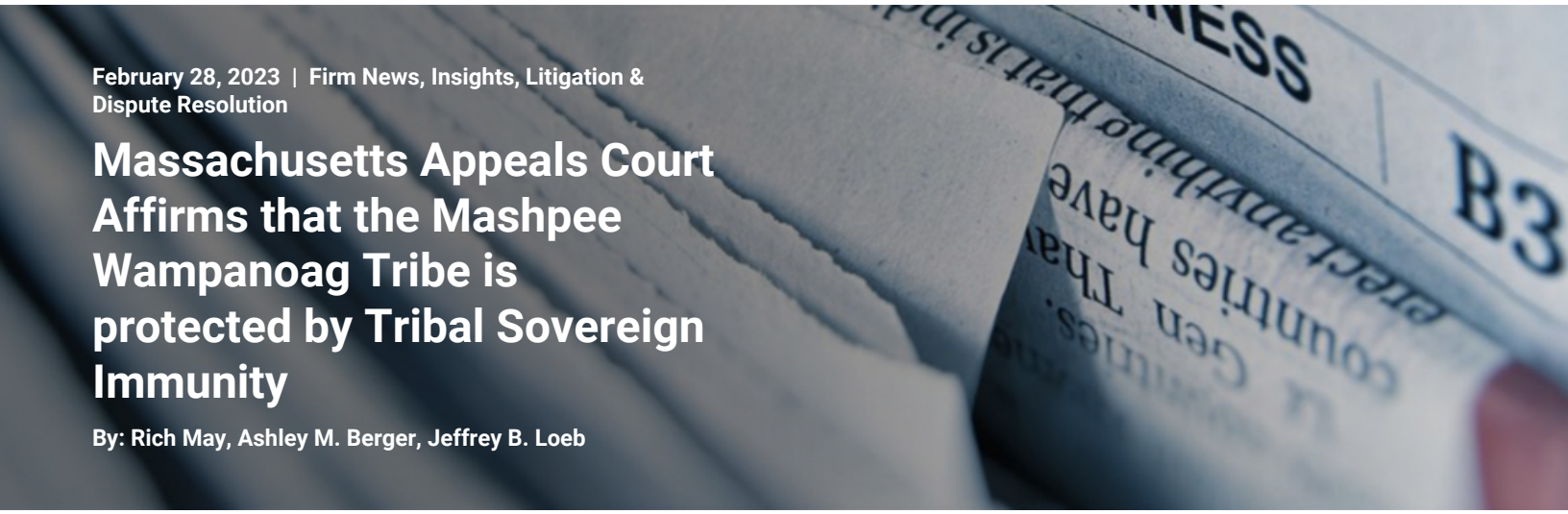

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Massachusetts Appeals Court Affirms that the Mashpee Wampanoag Tribe is protected by Tribal Sovereign Immunity

By: Rich May, Ashley M. Berger, Jeffrey B. Loeb

In a decision issued on February 15, 2023, the Massachusetts Appeals Court affirmed a trial court ruling that the doctrine of tribal sovereign immunity applies to aquaculture activities carried out by Rich May's client, the Mashpee Wampanoag Tribe (the "Tribe"). It is an important victory for the Tribe as it is another ruling that makes clear that the Mashpee Wampanoag Tribe is a sovereign nation.

In the Spring of 2021, suit was brought against the Tribe asserting that its aquaculture activities trespassed on land owned by the Plaintiff on and around Gooseberry Island off the shores of Cape Cod and otherwise impacted on his rights. Since 1977, the Tribe had been the holder of a license granted by the Town of Mashpee permitting the Mashpees to engage in shellfishing and other aquaculture on and around Gooseberry Island. In responding to the Complaint, the Tribe asserted that the claims were barred by the doctrine of tribal sovereign immunity and moved to dismiss the Complaint. In early 2022, the Barnstable Superior Court granted the Tribe's Motion to Dismiss and the Plaintiff appealed.

In its decision, the Massachusetts Appeals Court reaffirmed that the Tribe is protected by the doctrine of tribal sovereign immunity. Tribal sovereign immunity is the legal principle that federally recognized Indian tribes cannot be sued in State or Federal Court unless the tribe consents to the suit or the tribal sovereign immunity is otherwise waived.

The Plaintiff alleged that because the Tribe had accepted the license from the Town of Mashpee, that the Tribe had waived sovereign immunity. The decision makes clear that the acceptance of a license from the Town of Mashpee is not a waiver of tribal sovereign immunity. It also makes clear that a waiver of sovereign immunity cannot be implied but must be express.

The Plaintiff also alleged that the Tribe was subject to the "immovable property exception" which provides that foreign states are not immune from suits where rights in immovable property are at issue. The Massachusetts Appeals Court then rejected the Plaintiff's argument that the so-called "immovable property exception" applied to the Tribe or even existed in this case.

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Finally, the Court held that the grant of the shellfish license issued by the Town of Mashpee to the Tribe does not permit a private citizen to enforce the state conservation regulations at issue.

Rich May's Jeff Loeb argued the case on behalf of the Tribe in both the Superior Court and the Appeals Court. He was assisted on brief in the Appeals Court by Ashley Berger.

About the Mashpee Wampanoag Tribe:

The Mashpee Wampanoag Tribe is a federally recognized tribe. The Tribe is based in Mashpee, Massachusetts. In 2015 Rich May assisted the Tribe when170 acres of land in Mashpee and an additional 150 acres of land in Taunton, Massachusetts were taken into trust on their behalf by the US Department of Interior, establishing these parcels as reservation land.

Disclaimer: This summary is provided for educational and information purposes only and is not legal advice. Any specific questions about these topics should be directed to Attorneys Jeffrey B. Loeb or Ashley M. Berger.

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