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### **West Wire: Blackfeet ruling clears way for lawsuits over tribal housing**

By JENNIFER BYRD, ASSOCIATED PRESS WRITER

BROWNING, Mont. -- Candice LaMott calls her house "poison."

There's black mold under the sink, holes in the walls and a foundation made of chemically treated wood, conditions she believes are responsible for illness in her family and even her mother's death.

"When she got this house, she just thought it was a mansion," LaMott said of her mother, from whom LaMott inherited the house. "She didn't care that the wood was going to kill her."

LaMott is one of a number of low-income Blackfeet tribal members who sued the tribe's housing authority and the U.S. Department of Housing and Urban Development in 2002 to have their houses, which were built in the late 1970s, replaced.

U.S. District Judge Sam Haddon dismissed both lawsuits in 2004. But a recent ruling by the 9th U.S. Circuit of Appeals is giving the homeowners some hope. That panel reinstated the lawsuit against the tribal housing authority.

The ruling is drawing attention throughout Indian Country because of its reasoning. The 9th Circuit said the Blackfeet tribe waived any claim to sovereign immunity in the ordinance that created the tribal housing authority. Lawyers say identical language is present in the founding documents of most tribal housing authorities around the nation.

"I think with this lawsuit, a lot of doors will open to Native Americans," LaMott said. "No longer should we stay in this type of home. We do live in America, but it's just a whole different world right here."

About 150 houses on the reservation were built in the 1970s with wooden foundations that were treated with arsenic and other toxic chemicals as preservatives. The plaintiffs allege that the use of the wood foundations caused their homes to deteriorate, and that the conditions of the homes have caused severe health problems, including asthma, kidney failure and respiratory problems. LaMott's mother, Dorothy, died of kidney failure about five years ago.

The families purchased or leased the homes through the HUD Mutual Help and Homeownership Program, which was designed to address housing needs of low-income American Indian families.

To be eligible for federal grants, the tribe had to form a housing authority charged with alleviating the shortage of "decent, safe and sanitary" housing.

The plaintiffs claimed that HUD required the use of wood foundations over the objection of tribal members and that both HUD and the housing authority failed to live up to the program's obligations.

Haddon dismissed the lawsuit against HUD, ruling he lacked jurisdiction to hear the matter. He dismissed the case against the tribal authority, ruling that it had sovereign immunity.

A three-member panel of the appeals court, however, disagreed, saying the Blackfeet tribe waived its immunity in this case when it signed an ordinance creating the housing authority in the '70s.

While LaMott and her neighbors are pleased with the court's decision, it is causing a buzz among American Indian legal experts who say it conflicts with decisions by other courts and could have unintentional consequences for all tribes.

"It's a case that is decided in the right way, but for the wrong reasons," said University of Montana law professor Raymond Cross.

"There certainly is a sense on the court that they need to provide some remedy for these Indian homeowners, and that's certainly understandable. Yet the legal means by which they do it, I think, are going to create more problems than solutions in the long run."

Cross said the ruling opens federal courts up to hearing cases that typically would be heard by tribal or state courts. And, he said, it opens tribal housing authorities to lawsuits from both tribal and non-tribal members.

"I think the lower federal district courts are not going to thank the 9th Circuit for doing that," Cross said.

Steve Doherty, the housing authority's attorney, is asking the full appeals court to rehear the matter. If the court refuses, an appeal to the U.S. Supreme Court is likely, Cross said.

The appeals court pointed to a clause in the ordinance, saying it was "a clear and unambiguous waiver of tribal immunity." Many Indian law attorneys who represent tribal housing authorities are concerned by that finding, said Richard Guest, a staff attorney with the Native American Rights Fund in Washington.

"I would say the vast majority of housing authorities have that law on their books," Guest said. "It's that ordinance and that language that is the concern because that was boilerplate, it was standard. HUD required tribes to adopt that specific language or they wouldn't get federal funding."

Jason Adams, executive director of the Salish and Kootenai Housing Authority on the Flathead Indian reservation, said he was disappointed the court essentially let HUD "off the hook" for any responsibility for the poor condition of the homes.

"HUD had an obligation to assure that those families were getting decent safe and sanitary homes," Adams said. "Them being released of any liability, I think, is a travesty; that's just terrible."

Susan Hammer, executive director of Ute Indian Tribal Housing Authority in Utah and a board member of the National American Indian Housing Council, also said HUD should be held responsible in the case.

"HUD has a huge responsibility here and should have stood up with and for the tribe," Hammer said in a written statement. "During the times that these homes were built, every single decision had to be submitted and approved by HUD. The locations, the clients, the house plans, the environmental issues, all of that was controlled by HUD."

Jane Goin, a HUD spokeswoman in Denver, declined comment because the case is pending. Attempts to reach Ray Wilson, executive director of Blackfeet Housing, for comment were unsuccessful.

While the appeals court ruling was a small victory, LaMott and her neighbors know it is far from the end of the battle. Even if they get a jury or judge to agree the tribal authority needs to repair or replace their homes, there's the bigger question of who would pay for it - since most of the housing authority's funding comes from HUD.

"It would be robbing Peter to help Paul because that money is marked for other housing needs," said Mary Ann Sutton, a Missoula attorney representing the plaintiffs.

The real problem, Guest said, is that Congress is simply not putting enough money toward Indian housing needs.

"In this day of huge deficits, one of many programs being cut is money to Indian housing," Guest said. "Money isn't being provided to remedy this kind of problem."

But the appeals court ruling may be a small step toward rectifying the problems, Sutton said.

"It gives the tribal members a measure of accountability which, in our position, should have always been that way," she said.

As winter approaches, LaMott wishes the lawsuit would move along quicker so she could get a new home that doesn't have cracks in the walls and holes around the doors that let cold air in.

She understands the legal process takes time, but frustration is setting in for her and her neighbors. They see new housing projects go up around the reservation for other residents and wonder why that money can't go to fixing or replacing their homes.

But, LaMott said, she has no choice but to stay in the house she considers dangerous because she has no other options.

"This is the way we live," LaMott said. "People need to know about this. We're just like foreigners in the United States. There's no way this type of housing would be allowed on the outside (of the reservation.)"