

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

OCT 26 2007

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff,

and

TULALIP TRIBES,

Plaintiff - Appellant,

v.

STATE OF WASHINGTON,

Defendant,

SWINOMISH TRIBAL COMMUNITY;  
et al.,

Real Parties in Interest,

and

SUQUAMISH INDIAN TRIBE,

Defendant - Appellee.

No. 06-35185

D.C. Nos. CV-70-09213-RSM  
SP-05-00004-RSM

MEMORANDUM\*

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF WASHINGTON,

Defendant,

and

SUQUAMISH INDIAN TRIBE,

Defendant - Appellee,

LUMMI NATION,

Real-party-in-interest -  
Appellant.

No. 06-35241

D.C. Nos. CV-70-09213-RSM  
SP-05-00004-RSM

Appeal from the United States District Court  
for the Western District of Washington  
Ricardo S. Martinez, District Judge, Presiding

Argued and Submitted October 17, 2007  
Seattle, Washington

Before: D.W. NELSON, BEAM\*\*, and RYMER, Circuit Judges.

This case is remanded to the district court. A 12(b)(6) dismissal is not appropriate. The district court failed to make any determination on whether it has

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\*\* The Honorable C. Arlen Beam, Senior United States Circuit Judge for the Eighth Circuit, sitting by designation.

continuing jurisdiction and on what ground. The jurisdictional basis is not self-evident; it is necessarily linked to the nature of the claim being asserted. The issues and proceedings are complex and meaningful appellate review requires a more developed record.

**REMANDED.**