Case No. 07-5104

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE TENTH CIRCUIT**

NATIVE AMERICAN DISTRIBUTING, a Division of Flat Creek Cattle Co., Inc., a Missouri corporation, and JOHN DILLINER, an individual,

Plaintiffs/Petitioners-Appellants,

vs.

SENECA-CAYUGA TOBACCO COMPANY, an enterprise of the Seneca-Cayuga Tribe of Oklahoma, LEROY HOWARD, an individual, FLOYD LOCKAMY, an individual, and RICHARD WOOD, an individual,

Defendants/Respondents-Appellees.

Case No. 07-5104

**On Appeal from the United States District Court**
**for the Northern District of Oklahoma**
**Case No. 4:05-CV-00427-TCK-SAJ**
**Honorable Terence Kern, U.S. District Court Judge**

# APPELLANTS' REPLY BRIEF

Jonathan C. Neff, OBA#11145
JONATHAN NEFF, P.C.
900 Reunion Center
Nine East Fourth Street
Tulsa, OK 74103
(918) 599-8600(Telephone)
(918) 599-8673(Facsimile)

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**APPELLANTS' REPLY BRIEF**

Plaintiff/Appellant, Native American Distributing, a Division of Flat Creek Cattle Co., Inc., a Missouri corporation (referred to herein as "NAD"), and Plaintiff/Appellant, John Dilliner ("Dilliner"), file this reply brief pursuant to Fed.R.App.P. 28(c).

**SUMMARY OF ARGUMENT**

The response briefs filed by Defendant/Appellee Seneca Cayuga Tobacco Company ("SCTC") and the individual Defendants/Appellees, Leroy Howard, Floyd Lockamy and Richard Wood (the "Individual Defendants") vehemently defend the judge-made doctrine of tribal immunity and its applicability to the Seneca Cayuga Tribe of Oklahoma, an Indian tribe recognized by the federal government (the "Tribe"). The issue on appeal, however, is

not whether tribal immunity applies to the Tribe; it clearly does apply. The issue is whether NAD and Dilliner should have been permitted to show that SCTC was operated as a business of the Tribal Corporation, which has waived tribal immunity.

The Trial Court held that the "to sue and be sued" clause in the Corporate Charter of the Tribal Corporation effectively waived tribal immunity as to the Tribal Corporation. NAD and Dilliner have produced documentary evidence showing that the Tribal Corporation is a viable entity. Documentary evidence shows that Chief Paul Spicer has repeatedly invoked the powers of the Tribal Corporation within the past two years. NAD and Dilliner also produced evidence showing that SCTC operates as a corporation, and that Dilliner was told by SCTC's management that he was dealing with the Tribal Corporation and there was no need for any further waiver of tribal immunity. Given this evidence, and the fact that the Tribe and the Tribal Corporation have exactly the same name, the District Court should have permitted discovery as to whether SCTC was operated by the Tribal Corporation, a viable corporate entity which has unequivocally and explicitly waived tribal immunity.

The Magistrate Judge and District Court erred in finding that NAD and Dilliner had "not explained how the requested discovery would even arguably demonstrate the expression of an unequivocal waiver of sovereign immunity . . . ." In briefing the discovery issue, NAD and Dilliner clearly explained that limited discovery for jurisdictional purposes would reveal further evidence that SCTC was operated, and it dealt with NAD and third parties, as a corporate entity that had waived tribal immunity, not as a governmental entity entitled to claim immunity. Contrary to the Magistrate's holding, NAD and Dilliner *did* explain how

the requested discovery would demonstrate an express waiver of tribal immunity–by showing that SCTC was operated as an enterprise of the Tribal Corporation, not the Tribe.

Limited discovery would have exposed further evidence of the corporate activities of SCTC and the Tribal Corporation. It would have revealed evidence corroborating the record testimony of Dilliner that he was told by the management of SCTC that in dealing with SCTC, he was dealing with the Tribal Corporation and there was no need for any further written waiver of tribal immunity. It would have revealed that the wrongdoing of SCTC's management was beyond the limits of the Tribe's powers and therefore beyond any possible color of authority. The Trial Court erred in prohibiting discovery and dismissing this case.

Rather than permit limited discovery on jurisdictional issues, the District Court chose to accept at face value the "unsworn declaration" of Chief Spicer that the Tribal Corporation exists "only on paper," notwithstanding substantial documentary evidence to the contrary. The Trial Court relied on a single Tribal resolution concerning the formation of SCTC, which says nothing about SCTC's operation or whether it was later owned and/or operated by the Tribal Corporation. The record evidence is insufficient to support summary dismissal of the case, in view of the contrary record evidence. Based on scant evidence, the Trial Court denied NAD and Dilliner the opportunity to pursue the Tribal Corporation, which has waived tribal immunity. They have no other remedy or forum.

The Trial Court erred in finding that "'policy concerns' have no place in the sovereign immunity analysis." This absolute statement goes far beyond Supreme Court and Tenth Circuit jurisprudence. The Supreme Court has not allowed policy concerns to *substitute* for

an explicit waiver of tribal immunity, but where an explicit waiver of tribal immunity exists, as in this case, courts certainly may *consider* policy concerns and equitable doctrines. The Trial Court's statement is a misinterpretation of controlling authorities.

To affirm the Trial Court would set a dangerous precedent. The Trial Court has effectively expanded the doctrine of tribal immunity to permit a Tribe to confer complete *immunity from suit* on any business in which the Tribe appears to have an interest, whether on or off reservation, without any consideration of policy concerns or equitable doctrines, and without permitting any discovery on jurisdictional matters or the applicability of a clear waiver of tribal immunity. Under this precedent, an entity that has effectively waived tribal immunity can commit illegal acts with impunity, then claim immunity and thereby avoid all discovery bearing on the existence of tribal immunity, *and* avoid all consideration of policy concerns and equitable doctrines. Even non-Indian employees of the business are immune. This case represents a significant expansion of the doctrine of tribal immunity.

In this case, the Trial Court should have permitted NAD and Dilliner to engage in discovery to show that SCTC was in fact an enterprise of the Tribal Corporation. Further, the Trial Court should not have declined to consider policy concerns and equitable doctrines. The Trial Court should have equitably estopped SCTC from claiming tribal immunity, given the uncontroverted testimony of John Dilliner, who testified: "We were told by SCTC's management that our contract was with . . . the Tribe's chartered business corporation . . . [and] in dealing with SCTC, we did not need a waiver of sovereign immunity . . . we would have a remedy in court."

To continue the judicial expansion of the doctrine of tribal immunity is to create a new class of businesses on and off reservation that are exempt from all laws and are free to engage in illegal and fraudulent conduct at will, without any fear of reprisal. The courts must avoid expanding a judicial doctrine that is undermining the rule of law in this country, where billions of dollars are invested each year in businesses that are exempt from all laws.

The Individual Defendants should not enjoy the protection of tribal immunity for their fraudulent and illegal acts. They were not acting under "color of authority" because a sovereign cannot grant authority which it does not possess. Further, granting immunity to individual wrongdoers does not protect tribal assets or the immunity of the tribe.

## ARGUMENT

### I. The Standard of Review on Appeal Is De Novo.

Under controlling authorities cited in Appellants' Opening Brief, conclusions of law are to be reviewed de novo and mixed questions of law and fact are also generally reviewed de novo. Further, in *Ute Distribution Corp. v. Ute Indian Tribe*, 149 F.2d 1260, 1263 (10th Cir. 1997), this Court of Appeals said: "This court reviews de novo the legal question of whether a party can assert immunity. *See Fletcher v. United States*, 116 F.3d 1315, 1323-24 (10th Cir. 1997)." The standard of review on all issues in this case is de novo.

### II. Tribal Immunity Does Not Protect SCTC.

#### A. The Record Does Not Support the Judgment.

Appellees' response briefs essentially reiterate the holding of the Trial Court, arguing that SCTC and the Individual Defendants are protected by the immunity of the Tribe, based

on (1) the unsworn declaration of Chief Spicer as to the viability of the Tribal Corporation, and (2) the Tribal resolution establishing SCTC. The Judgment rests solely on these two (2) documents, which the Trial Court found to be "compelling evidence" that SCTC was an organ of the Tribe and not the Tribal Corporation. Aplt. App. 386. The record, however, contains substantial contradictory evidence, including documentary evidence that belies the Chief's statements concerning the viability of the Tribal Corporation, and the uncontested Affidavit of John Dilliner attesting to the fact that he was told by SCTC's management that he was dealing with the Tribal Corporation. Aplt. App. 248, 244, 359-66.

Given the record evidence of the recent invocation by Chief Spicer of the Tribal Corporation's powers in multiple instances, the self-serving unsworn statement of the Chief loses all credibility. The unsworn statement does not constitute "compelling evidence." Likewise, the Tribal resolution concerning the formation of SCTC does not prove that years later, SCTC was operated as an enterprise of the Tribe, as opposed to the Tribal Corporation. In fact, the uncontested testimony of Dilliner that the management of SCTC told him that he was dealing with the Tribal Corporation is more probative of which entity made contracts with NAD and Dilliner.

The fact that the name of the Tribal Corporation is *exactly* the same as the name of the Tribe is troublesome and makes this case unique in the jurisprudence of tribal immunity. In no other case involving tribal immunity and tribal corporations has the name of the tribal constitutional entity and the tribal corporate entity been exactly the same. Under these circumstances, and given Dilliner's uncontested testimony, the Trial Court should not have

dismissed the case based on two marginal bits of evidence. Instead, the Trial Court should have permitted discovery as to which entity made contracts with NAD.

### B. The Tribal Corporation Has Waived Tribal Immunity.

In their response briefs, SCTC and the Individual Defendants both argue that there has been no effective waiver of tribal immunity in this case, which is based on the assumption that NAD's contracts were with the Tribe. However, the Tribal Corporation clearly *has* waived immunity, which the Trial Court specifically found in its Judgment. Aplt. App. 385. *See also State of Alaska v. Native Village of Venetie*, 856 F.2d 1384, 1387 (9th Cir. 1988) ("tribal sovereignty will not be effective . . . if it was waived during incorporation under the IRA."). The only issue, then, is whether NAD contracted with the *corporate* Seneca-Cayuga Tribe of Oklahoma, or the *constitutional* Seneca-Cayuga Tribe of Oklahoma. The evidence before the Trial Court was conflicting and was insufficient to support summary dismissal of this case, particularly in view of the uncontested testimony of John Dilliner as to what he was told. The Trial Court should have permitted discovery on the issue of *which* Seneca-Cayuga Tribe of Oklahoma operated SCTC and contracted with NAD.

## III. The Trial Court Erred in Not Permitting Any Discovery.

The Magistrate Judge and District Court erred in finding that NAD and Dilliner had "not explained how the requested discovery would even arguably demonstrate the expression of an unequivocal waiver of sovereign immunity . . . ." In the Plaintiffs' Brief Requesting Limited Discovery, NAD and Dilliner fully explained that the Tribal Corporation has waived tribal immunity in its Corporate Charter and further explained that the requested discovery

would address "whether Seneca-Cayuga Tobacco Company did business with Plaintiffs and third parties as a corporate entity that has waived immunity, or as a governmental entity entitled to claim immunity." Aplt. App. 152-53. It was clearly explained to the Trial Court that discovery would reveal evidence that NAD and Dilliner were dealing with the Tribal Corporation, which has explicitly and unequivocally waived tribal immunity in its Corporate Charter. Yet the Magistrate Judge and Trial Court inexplicably held that NAD and Dilliner had not explained how discovery could demonstrate the existence of a waiver of immunity. Discovery was not needed to show the *existence* of a waiver of immunity. A waiver of immunity exists in the Corporate Charter, as the Trial Court specifically found. Discovery was needed to demonstrate that NAD and Dilliner were dealing with the Tribal Corporation that has waived immunity. They were denied that opportunity.

The Tenth Circuit Court of Appeals has held that while a district court has discretion in the manner by which it resolves issues of subject matter jurisdiction under rule 12(b)(1), a refusal to grant discovery constitutes an abuse of discretion if the denial results in prejudice to a litigant. *Sizova v. National Institute of Standards & Technology*, 282 F.3d 1320, 1326 (10th Cir. 2002). Such prejudice is present where "pertinent facts bearing on the question of jurisdiction are controverted . . . or where a more satisfactory showing of the facts is necessary." *Id.*, quoting *Wells Fargo & Co. v. Wells Fargo Express Co.*, 556 F.2d 406, 430 n. 24 (9th Cir. 1977); *see also First City, Texas-Houston v. Rafidain Bank*, 150 F.3d 172 (2nd Cir. 1998) (district court abused its discretion by dismissing complaint against foreign bank on grounds of sovereign immunity without permitting discovery on jurisdictional issues).

In the case at bar, *no* discovery was permitted. Even minimal discovery could have revealed additional facts concerning the founding, financing, development and operation of SCTC bearing on SCTC's entitlement to tribal immunity as an organ of the Tribe, as opposed to the Tribal Corporation. Discovery could have illuminated the wrongdoing of SCTC's management (acknowledged in the forensic audit) and shown that their actions extended well beyond the scope of authority the Tribe could bestow, *i.e.*, the scope of power the Tribe possesses. These facts clearly bear on the right of the Individual Defendants to claim tribal immunity, which does not exist if NAD contracted with the Tribal Corporation which has waived immunity. It was a clear abuse of discretion for the Trial Court to dismiss this case without permitting any discovery on these critical jurisdictional issues.

## IV. The Trial Court Erred in Holding that Policy Concerns And Equitable Doctrines Cannot be Considered.

In holding that "'policy concerns' have no place in the sovereign immunity analysis," the Trial Court was apparently relying on a statement in *Ute Distribution Corp. v. Ute Indian Tribe*, 149 F.3d 1260 (10th Cir. 1998)("*Ute Distribution*"), interpreting the 1998 Supreme Court case of *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, 523 U.S. 751, 118 S.Ct. 1700, 140 L.Ed.2d 981 (1998)("*Kiowa Tribe*"). In *Ute Distribution*, the Tenth Circuit Court of Appeals, citing *Kiowa Tribe*, said:

> *In the absence of a clearly expressed waiver* by either the tribe or Congress, the Supreme Court has refused to find a waiver of tribal immunity based on policy concerns, perceived inequities arising from the assertion of immunity, or the unique context of a case.

*Ute Distribution*, 149 F.3d at 1267 (emphasis added).

In *Ute Distribution*, the Ute Indian Tribe, which had not waived tribal immunity, was sued by Ute Distribution Corporation concerning tribal water rights. There was no explicit waiver by Congress or by the Ute tribe of its tribal immunity. The trial court in that case found that the federal statute at issue, the Ute Partition and Termination Act, effected an implied waiver of sovereign immunity. The Tenth Circuit Court of Appeals reversed, finding no "clearly expressed waiver" in the Act. The Court of Appeals commented that without a clearly expressed waiver by either Congress or the tribe, "policy concerns" and "perceived inequities" could not constitute a waiver of immunity.

In *Ute Distribution*, the trial court, for policy reasons, found an *implied* a waiver of tribal immunity in a statute where no *explicit* waiver existed. In contrast, in the instant case, the Trial Court specifically found that an *explicit* waiver of tribal immunity exists. The question is whether NAD was dealing with the entity that has waived immunity. Nothing in *Ute Distribution* or *Kiowa Tribe* prohibits consideration of policy concerns or the application of equitable doctrines in a case where an explicit waiver of tribal immunity exists. They only prohibit conjuring a waiver from other factors where no explicit waiver exists.

The quoted passage from *Ute Distribution*, addressing the use of policy concerns and "perceived inequities" to find a waiver of immunity in the absence of an express waiver, is based on a sentence found in the *Kiowa Tribe* opinion. In discussing reasons for *abrogating* tribal immunity, the Supreme Court said that "immunity can harm those who are unaware that they are dealing with a tribe, who do not know of tribal immunity, or who have no choice in the matter, as in the case of tort victims." *Kiowa Tribe*, 523 U.S. at 758, 118 U.S. at 1704.

The Supreme Court also observed that in present society, "tribal immunity extends beyond what is needed to safeguard tribal self-governance." *Id*.

The Court in *Kiowa Tribe* was not asked to abrogate the doctrine of tribal immunity, and it declined to confine tribal immunity to reservations or non-commercial activity. In discussing the negative effects of tribal immunity, it observed that immunity can harm certain classes of people. But it did *not* say that policy considerations and perceived inequities cannot be considered in a case where an explicit waiver of tribal immunity exists. Instead, the Court found that the Kiowa Tribe had *not* waived tribal immunity.

The Supreme Court pointed out that in a world of Indian ski resorts, gambling casinos, race tracks and other businesses, sovereign immunity is a trap for the unwary and those with "no choice in the matter." This statement does *not* mean that policy concerns and equitable doctrines "have no place in the sovereign immunity analysis," particularly where, as in this case, an explicit waiver of tribal immunity exists.

In *Ute Distribution*, the Tenth Circuit Court of Appeals cites not only *Kiowa Tribe*, but two other examples of the Supreme Court declining to abrogate tribal immunity or find a waiver of immunity for policy reasons. None of these cases, however, go so far as to state that "policy concerns have no place in the tribal immunity analysis." To the contrary, in each case the Supreme Court *considered* the policy concern at issue and declined to abrogate tribal immunity or find an implied a waiver of immunity for policy reasons. Each case was brought directly against a tribe, and in each case there was *no express waiver* of immunity either by Congress or the tribe. *See Oklahoma Tax Comm'n v. Citizen Band of Potawatomi*

*Indian Tribe*, 498 U.S. 505, 111 S.Ct. 905, 112 L.Ed.2d 1112 (1991); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 98 S.Ct. 1670, 56 L.Ed.2d 106 (1978). Neither the Supreme Court nor the Tenth Circuit Court of Appeals has held that neither policy concerns nor equitable doctrines may be considered in determining issues of tribal immunity.

## V. The Trial Court Improperly Expanded The Judicial Doctrine of Tribal Immunity.

The Trial Court's Judgment expands the doctrine of tribal immunity, proclaiming that even where an *explicit* waiver of tribal immunity exists, neither policy concerns nor equitable doctrines may be considered. This blanket statement stretches an already strained judicial doctrine too far. Given the representations made by SCTC to Dilliner, the Trial Court should have equitably estopped SCTC from claiming the protection of tribal immunity.

In their dissent in *Kiowa Tribe*, three currently sitting Justices of the Supreme Court, Justices Stevens, Thomas and Ginsburg, said that the continuing judicial expansion of the doctrine of tribal immunity is not "deferring to Congress" or "exercising 'caution' . . . rather, it is creating law" and "the performance of a legislative function." *See Kiowa Tribe*, 523 U.S. at 764-65, 118 S.Ct. at 1708. The majority in *Kiowa Tribe* chose to "defer to Congress" rather than abrogate or narrow tribal immunity, but they also acknowledged that "[t]here are reasons to doubt the wisdom of perpetuating the doctrine." *Kiowa Tribe*, 523 U.S. at 758, 118 S.Ct. at 1704. The dissenters would abrogate the doctrine, which they consider "unjust" and granting immunity broader than that enjoyed by the states, the federal government, and foreign nations. *Kiowa Tribe*, 523 U.S. at 765-66, 118 S.Ct. at 1708. The majority discussed a possible "need to abrogate tribal immunity, at least as an overarching rule," but ultimately

held *only* that where *immunity has not been waived*, tribes enjoy immunity from suits on contracts whether they involve governmental or commercial activity and whether they were made on or off the reservation. *Kiowa Tribe*, 523 U.S. at 760, 118 S.Ct. at 1705.

In this case, the Tribal Corporation has expressly waived tribal immunity. The name of the Tribal Corporation is exactly the same as the name of the Tribe. Uncontested record evidence proves that officers of SCTC represented to Dilliner that he was dealing with the Tribal Corporation. NAD and Dilliner have exhausted all tribal remedies and have no other forum. Under these facts, SCTC should have been equitably estopped from claiming the protection of tribal immunity.

## VI. The Officers of SCTC Are Not Protected By Tribal Immunity.

If SCTC was an enterprise of the Tribal Corporation that has waived immunity, the employees of SCTC are not entitled to claim immunity. Even if SCTC was an enterprise of the Tribe, dismissal of the claims against the individual Defendants was improper because their actions went beyond the powers that the Tribe, as a sovereign, possesses.

The Trial Court held that the Individual Defendants were protected by tribal immunity because they were "acting at all times with at least a 'colorable claim of authority' from the Tribe**."** Aplt. App. 396. However, in *Tenneco Oil Co. v. Sac and Fox Tribe of Indians of Okla*., 725 F.2d 572, 576 n.1 (10th Cir. 1984), the Tenth Circuit Court of Appeals held that tribal immunity "does not extend to an official when the official is acting as an individual or outside the scope of those powers that have been delegated to him." *Id*., citing *Larson v. Domestic & Foreign Corp*., 337 U.S. 682, 689-90, 69 S.Ct. 1457, 1461, 98 L.Ed. 1628

(1949) (an exception to sovereign immunity exists as to individual officers when they have "acted outside the amount of authority that the sovereign is capable of bestowing."). "Any other rule would mean that a claim of sovereign immunity would protect a sovereign in the exercise of power it does not possess." *Tenneco Oil Co.*, 725 F.2d at 574; *see also State of Alaska v. Native Village of Venetie*, 856 F.2d 1384, 1387 (9th Cir. 1988).

The Trial Court cites district court cases where claims against individuals for illegal acts were dismissed on grounds of tribal immunity when the acts were done "on behalf of" a tribe. But immunizing individuals for intentional illegal acts from which they personally profited does not serve any policy goal supporting tribal immunity. The policies underlying the doctrine of tribal immunity are (1) to recognize the sovereign status of the tribes, and (2) to shield limited tribal assets from dissipation. Immunizing *individuals* for their intentional illegal acts simply because they are employed by a tribal business does nothing to advance these purposes. Suits against individual wrongdoers do not impinge on tribal immunity or threaten tribal assets. The extension of tribal immunity to individual wrongdoers undermines the rule of law, however, and it should therefore should be strictly limited. Appellants should be allowed to pursue their claims against the Individual Defendants.

## VII. Conclusion and Statement of Specific Relief Sought.

The Judgment is not supported by the evidence. A single tribal resolution relating to the formation of SCTC and the Chief's unsworn declaration are insufficient to prove that NAD and Dilliner were *not* dealing with the Tribal Corporation which has waived immunity, given the conflicting evidence, including Dilliner's uncontested testimony that SCTC told

him that he was dealing with the Tribal Corporation, and the fact that the Tribe and the Tribal Corporation have exactly the same name. Under these circumstances, the Trial Court should have equitably estopped SCTC, or at least permitted discovery on this jurisdictional issue. Not to permit discovery on this issue constitutes an abuse of discretion.

The Trial Court misread Supreme Court and Tenth Circuit authorities and improperly expanded the doctrine of tribal immunity by holding that policy concerns "have no place in the sovereign immunity analysis." In *Kiowa Tribe* and other recent cases, the Supreme Court has extensively considered policy concerns, but has refused to abrogate tribal immunity, deferring to Congress while questioning the "wisdom of perpetuating the doctrine."

Extending tribal immunity to individual wrongdoers does not serve the policy goals of respecting tribal sovereignty or protecting tribal assets. It only undermines the rule of law and encourages illegal acts by those in the employ of tribes. Even if SCTC is entitled to claim tribal immunity, the claims against the Individual Defendants should proceed.

The standard of review is de novo. On the record evidence, the Court of Appeals should remand with instructions that SCTC and the individual Defendants are equitably estopped from claiming the protection of tribal immunity.

Respectfully submitted,

s/Jonathan C. Neff
Jonathan C. Neff, OBA#11145
JONATHAN NEFF, P.C.
900 Reunion Center
Nine East Fourth Street
Tulsa, OK 74103
(918) 599-8600 (Telephone)
(918) 599-8673 (Facsimile)

## CERTIFICATE OF COMPLIANCE

**Section 1. Word Count**

As required by Fed. R. App. P. 32(a)(7)(C), I certify that this brief is proportionally spaced and contains 4929 words. I relied on my word processor to obtain the word count and it is WordPerfect X3.

**Section 2. Line Count**

My brief was prepared in a monospaced typeface and contains 529 lines of text using WordPerfect X3 in font size 13 and Times New Roman. I certify that the information on this form is true and correct to the best of my knowledge and belief formed after a reasonable inquiry.

s/Jonathan C. Neff
Jonathan C. Neff

## CERTIFICATE OF DIGITAL SUBMISSION

I, Jonathan C. Neff, hereby certify on this 12th day of November, 2007, that:

(1) all required privacy redactions (below) have been made and, with the exception of those redactions, every document submitted in Digital Form or scanned PDF format is an exact copy of the written document filed with the Clerk, and

(2) the digital submissions have been scanned for viruses with the most recent version of a commercial virus scanning program Norton AntiVirus Corporate Edition, Version 7.60.926, last updated on November 10, 2007, and, according to the program, are free of viruses.

s/Jonathan C. Neff
Jonathan C. Neff

## CERTIFICATE OF SERVICE

I, Jonathan C. Neff, hereby certify that on this 12th day of November, 2007, a true and correct copy of the foregoing *Appellants' Reply Brief* was mailed by first class mail, postage

prepaid, and by electronic mail per the Emergency General Order as amended January 1, 2006 section (e) Service to the following:

Stephen R. Ward
Andrew R. Turner
Conner & Winters
4000 One Williams Center
Tulsa, OK 74172-0148
aturner@cwlaw.com

Scott Boudinot Wood
Wood Puhl & Wood
2409 E. Skelly Dr., Suite 200
Tulsa, OK 74105
okcoplaw@aol.com

s/Jonathan C. Neff
Signature

November 12, 2007
Dated signed

Jonathan C. Neff
Jonathan Neff, P.C.
Nine East Fourth St., Suite 900
Tulsa, OK 74103-5115