

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

SWANDA BROTHERS, INC., an Oklahoma  
Corporation,

Plaintiff,

vs.

Case No. CIV-08-199-D

CHASCO CONSTRUCTORS, LTD, L.L.P.,  
A Texas Limited partnership,

Defendant,

and

F. G. HAGGERTY COMPANY, INC.,

Intervenor.

**MOTION TO DISMISS FOR LACK OF JURISDICTION**

COMES NOW, KIOWA CASINO OPERATIONS AUTHORITY an arm of the KIOWA INDIAN TRIBE OF OKLAHOMA and hereby appears specially for the purpose of challenging the jurisdiction of the United States District Court and for the purpose of presenting this Motion to Dismiss For Lack of Jurisdiction and in support thereof states:

I.

**STATEMENT OF OPERATIVE FACTS**

1. The Kiowa Tribe of Indians of Oklahoma, hereinafter referred to as “the Tribe”, is a federally recognized Indian Tribe with its principal offices situated in Carnegie, Oklahoma.

2. The Tribe is governed by a Constitution and By-Laws approved by the Tribe and approved by Acting Associate Commissioner of Indian Affairs, William J. Benhan, Acting Associate Commissioner of Indian Affairs, Washington, DC, on the 13<sup>th</sup> day of March, 1970. A copy of the Constitution and By-Laws of the Tribe is attached hereto and marked Exhibit "A". The Kiowa Indian Council is defined in Article I, Section 2, which states that the Kiowa Indian Council is the governing body of the Tribe, composed of all members at least eighteen (18) years of age or older, empowered to act on those matters outlined in Article V, Section 1, *See*, Article V, Section 2, Constitution and By-Laws of the Kiowa Tribe of Indians of Oklahoma.
3. The Kiowa Business Committee, hereinafter referred to as "the Business Committee" is defined in Article V. Section 2, Constitution and By-Laws of the Tribe, as an eight (8) member representative body empowered to act on those matters outlined in Article V, Section 2, Constitution and By-Laws of the Tribe. Article V, Section 1, Constitution and By-Laws of the Tribe, sets forth the powers of the Kiowa Indian Council. Section 1, subparagraph h states, "all other powers not vested in the Business Committee by Section 2, of this Article shall be retained by the Kiowa Indian Council.
4. The powers of the Business Committee are set forth in Article V, Section 2 of the Constitution and By-Laws of the Tribe. Section 2 of Article V of the Constitution and By-Laws of the Tribe does not vest any authority whatsoever in the Business Committee to waive the sovereign immunity of the Tribe or subject the Tribe and its officers to the jurisdiction of the Court.

5. The Kiowa Indian Council as defined by the Kiowa Constitution, Art 1 sec. (2), has the sole and exclusive jurisdiction and power to submit the Tribe and its officers to the jurisdiction of the Court (Constitution, Art. 5, sec. 1 (h) and sec. 2 (a-i).
  6. The Tribe and its officers are thereby protected from the pending litigation and attempted joinder by CHASCO CONSTRUCTORS, Ltd. L.L.P., as an indispensable party by the doctrine of Sovereign Immunity.
  7. In order for a waiver of Sovereign Immunity to exist under the Kiowa Constitution a referendum election must be held to approve resolutions submitted by the Kiowa Business Committee, see Kiowa Constitution Art. 7 Section 1. Under the Kiowa Constitution the Kiowa Business Committee is not given the power to waive the Sovereignty of the Kiowa Tribe without the approval of the Kiowa Indian Council (KIC). No such election has been held.
  8. As stated in the Third-Party Complaint filed by Chasco Constructors, Ltd., L.L.P., “KCOA is an instrumentality and business enterprise of the Kiowa Indian Tribe of Oklahoma, a federally recognized Indian tribe which has sovereign immunity”.
  9. The Kiowa Casino Operations Authority is an arm of the Kiowa Tribal Government and as such is entitled to the same sovereign immunity protections as the Kiowa Tribe.
- Respondents, KCOA, provide the following additional Arguments and Authorities in support of their Special Appearance and Motion to Dismiss For lack of Jurisdiction.

## II.

**CONTROLLING FEDERAL PRECEDENT GENERALLY PROHIBIT SUITS  
AGAINST TRIBES AND OFFICERS WITHOUT A CLEAR WAIVER OF  
SOVEREIGN IMMUNITY.**

1. Long-standing principles of federal Indian law shield the Kiowa Tribe with sovereign immunity from suit. See, e.g. Santa Clara Pueblo v. Martinez, 436 U.S. 49, (1978), (tribe immune from suit by tribal member for violation of enrollment law); Oklahoma Tax Commission v. Citizen Band of Potawatomi Indian Tribe of Oklahoma, 498 U.S. 505 (1991) (suits against tribes are barred by sovereign immunity absent clear waiver by tribe or congressional abrogation) and Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc., 523 U.S. 751 (1998). (tribe immune from suit on contract absent its consent ).
2. Courts have never found or created or implied waivers of sovereign immunity sufficient to provide their jurisdiction. Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc., supra. No expressed and unambiguous waiver of sovereign immunity by the Tribe under their Constitution exists.

III.

**CONCLUSION AND PRAYER FOR RELIEF**

Respondents urge the Court to conclude that the United States District Court for the Western District of Oklahoma lacks subject matter jurisdiction and in personam jurisdiction over the Kiowa Tribe of Oklahoma and its officers as alleged in Defendant, Chasco Constructors, Ltd., L.L.P. Third-Party Complaint and dismiss the case filed against your respondent with prejudice for lack of jurisdiction due to the sovereign immunity of the Kiowa Tribe of Oklahoma.

Respectfully Submitted;

S/ Ryland L. Rivas

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**CERTIFICATE OF SERVICE**

This is to certify that on the 25<sup>TH</sup> day of March, 2009, a true and correct copy of the foregoing document was sent via *ECF Filing* to the following:

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