

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

1) EASTERN SHAWNEE TRIBE OF  
OKLAHOMA,

Plaintiff,

v.

1) STATE OF OKLAHOMA,

Defendant.

Case No. 5:10-cv-00459-W

**PLAINTIFF EASTERN SHAWNEE TRIBE OF OKLAHOMA'S  
MOTION FOR SUMMARY JUDGMENT AND BRIEF IN SUPPORT**

Plaintiff Eastern Shawnee Tribe of Oklahoma ("Tribe") moves for summary judgment against Defendant State of Oklahoma ("Oklahoma") pursuant to Fed.R.Civ.P. 56 and LCvR56.1. The material facts in this case are undisputed and the Tribe is entitled to judgment:

- (1) confirming the arbitration award *In the Matter of the Joint Referral to Binding Arbitration by the Eastern Shawnee Tribe of Oklahoma and the State of Oklahoma of Dispute Arising Under Tribal Gaming Compact*, dated April 5, 2010, ("Arbitration Award") (Ex. 2); and
- (2) upon *de novo* review of the same Arbitration Award, determining that Oklahoma is additionally bound by the parties' "*Resolution of Dispute Arising Under the State-Tribal Gaming Compact Between the State of Oklahoma and the Eastern Shawnee Tribe of Oklahoma*" (Ex. 3), which deprives Oklahoma's courts of jurisdiction over civil actions asserting tort or prize claims against the Tribe under Part 6 of the Compact.

**STATEMENT OF UNDISPUTED MATERIAL FACTS**

1. On November 2, 2004, Oklahoma adopted the Model Tribal Gaming Compact pursuant to the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. §§ 2701 *et seq.*<sup>1</sup> Okla. Stat. tit. 3A, § 281. Section 11 of the IGRA, 25 U.S.C. § 2710, authorizes such tribal-state compacts to prescribe terms for engaging in "Class III gaming" on tribal lands. On November 8, 2004, the Tribe accepted Oklahoma's offer to enter into the Model Tribal Gaming Compact. (Ex. 10, Wallace Decl., ¶15.) The offer may be found at Okla. Stat. tit. 3A, §280 (2009 supp.).

2. The Tribe and Oklahoma, therefore, entered into a State-Tribal Gaming Compact, which was signed by the Tribe's Chief and the Governor of Oklahoma (the "Compact"). The U.S. Department of the Interior approved the Compact as required by Part 16 therein, effective February 9, 2005. 70 Fed. Reg. 6,903 (Feb. 9, 2005). On January 6, 2006, the Department again noted this prior approval in a letter to the Tribe's Chief, copying Oklahoma's Governor. A true and correct copy of the Compact with the DOI's approval and subsequent

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<sup>1</sup> The Indian Gaming Regulatory Act was enacted to provide a basis for Indian gaming "as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments." 25 U.S.C. § 2702(1). Revenues from regulated Indian gaming may only be used to fund tribal government operations, provide for tribal welfare and economic development, donations to charitable organizations, or to help fund local government agencies. 25 U.S.C. § 7210(b)(2)(B), (d)(1)(A)(ii).

letter are attached hereto as Exhibit "1". (Ex. 10, Wallace Decl., ¶15; Ex. 3, Resolution, ¶1(A).)

3. Part 6 of the Compact provides for the determination of "tort claims" -- claims for personal injury or property damage arising out of incidents occurring at the gaming facility. Part 6 also addresses "prize claims" -- claims arising from a patron's dispute in connection with the play of a game, such as the amount of prize awarded, the failure to be awarded a prize, or the right to receive a refund or other compensation. (Ex. 1, Compact, Part 6.)

4. Part 9 of the Compact forbids any expansion of the civil jurisdiction of Oklahoma state courts, expressly stating that it does not alter state civil adjudicatory jurisdiction. (Ex. 1, Compact, Part 9; Ex. 3, Resolution, ¶1(D).)

5. The Tribe operates two casino facilities with Class III games pursuant to the Compact. The Tribe derives significant revenues from gaming within these facilities pursuant to the IGRA and depends on these revenues to fund various authorized governmental programs to serve the needs of its citizens. (Ex. 10, Chief Wallace Decl., ¶18.)

6. On January 20, 2009, with no majority opinion and four justices in dissent, the Oklahoma Supreme Court asserted the existence of state civil-adjudicatory jurisdiction over a tort claim arising under the Model Tribal Gaming Compact adopted by Oklahoma and another tribe, the Cherokee Nation of Oklahoma. *Cossey v. Cherokee Nation Enterprises, LLC*, 2009 OK 6, 212 P.3d 447. On June 11, 2009, the Oklahoma Supreme Court denied the Cherokee

Nation's petition for rehearing without comment and issued a mandate directing the state district court to proceed on the merits of the state-court tort plaintiff's lawsuit. (Ex. 7, Cossey docket sheet; Ex. 11, McBride Dec., ¶11.)

7. On June 30, 2009, the Oklahoma Supreme Court issued five-justice per curiam opinions in two new cases holding that Oklahoma state courts have civil-adjudicatory jurisdiction over tort claims arising under the same Model Tribal Gaming Compact terms. *Griffith v. Choctaw Casino*, 2009 OK 51, --- P.3d --- (per curiam); *Dye v. Choctaw Casino*, 2009 OK 52, --- P.3d --- (per curiam). The Court in *Dye* and *Griffith* abandoned theories espoused in *Cossey* that a material tribal sovereign immunity waiver could be found somewhere *other than* in the relevant Tribal Gaming Compact.

8. As Justice Kauger noted, the Court in all three cases refused to consider the sworn affidavits submitted by the Governor of Oklahoma (who signed into law SB 1252) and the State Treasurer of Oklahoma (who was Oklahoma's lead negotiator with the tribes to establish the Model Tribal Gaming Compact):

... which indicate that they negotiated and signed the compact with the intent that the phrase 'a court of competent jurisdiction' was not a provision intended to extend the jurisdiction of State courts. Rather, it was intended to preserve preexisting Tribal court jurisdiction over claims arising in Indian country against Indian Tribes.

*Griffith*, 2009 OK 51 (Kauger, J., concurring & dissenting) n.2; *Dye*, 2009 OK 52, (Kauger, J., concurring & dissenting) n.2. The amicus brief filed by the Governor

and Treasurer in *Cossey* confirms their roles in the negotiation and execution. The amicus brief confirms that both the tribes and Oklahoma mutually intended and understood that the tribes would retain their sovereign immunity and possess exclusive jurisdiction over any tort or prize claims under Part 6 of the Compact. A true and correct copy of the amicus brief is attached hereto as Exhibit "12." (Ex. 11, McBride Decl., ¶13.)

9. To resolve the dispute created by the Oklahoma Supreme Court in *Cossey*, *Griffith*, and *Dye*, the Choctaw and Chickasaw Nations invoked arbitration under Part 12(2) of the Compact. The dispute was presented to the Hon. Layn R. Phillips, former U.S. District Court Judge for the Western District of Oklahoma, as the sole Arbitrator. On August 25, 2009, Judge Phillips rendered an arbitration decision holding that Oklahoma had exceeded its jurisdiction under the Compact and was violating tribal sovereign immunity. A true and correct copy of the Choctaw-Chickasaw arbitration decision is attached hereto as Exhibit "6". (Ex. 11, McBride Decl., ¶ 14).

10. The Choctaw Nation moved the Oklahoma Supreme Court to honor the resulting arbitration in *Griffith* and *Dye*. On April 12, 2010, the Oklahoma Supreme Court denied the motions to honor the arbitration award and the previously-filed petitions for rehearing. The docket sheets for these cases are attached hereto as Exhibits "8" and "9". (Ex. 11, McBride Dec., ¶11.)

11. This Tribe has also been subject to improper state-court claims. On August 21, 2009, a tort claimant sued the Tribe in *Crocker v. Eastern Shawnee*

*Tribe and Bordertown Casino & Bingo*, No. CJ-09-485 (Ottawa County, Oklahoma) seeking damages for injuries allegedly sustained at the Tribe's casino and covered by Part 6 of the Compact. The Tribe made a special entry of appearance and filed a motion to dismiss based on sovereign immunity and lack of jurisdiction. On January 8, 2010, the state district court denied the Tribe's motion to dismiss but agreed to certify the matter for interlocutory appeal to the Oklahoma Supreme Court.<sup>2</sup> Although the Tribe furnished the court with the Choctaw-Chickasaw arbitration decision (based on an identical compact), the state district court judge cited *Cossey* as binding authority, and stated to the parties (after instructing the court reporter to wait before recording):

“I do not care what the Governor says, I do not care what an arbitrator says, I do not care what a federal court says, I only answer to the Oklahoma Supreme Court—they are my boss.”

(Ex. 11, McBride Decl. ¶6; Ex. 10, Wallace Decl., ¶9.)

12. The Tribe was also subject to an earlier Part 6 suit filed by a tort claimant in *Harrington v. Eastern Shawnee Tribe of Oklahoma Foundation, Inc., et al.*, No. CJ-08-313 (Ottawa County). On January 26, 2009, the *Harrington* court denied the Tribe's Motion to Dismiss based on sovereign immunity and jurisdiction, six days after *Cossey* decision. (Ex. 11, McBride Decl., ¶9.)

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<sup>2</sup> The Tribe filed subsequent renewed motions to dismiss based upon the resolution of dispute with Oklahoma in February 2010 (Ex. 3) and upon Judge Phillips rendering the April 5, 2010 arbitration award (Ex. 2). The *Crocker* court has yet to rule upon those motions. (Ex. 11, McBride Decl., ¶¶ 7 & 8).

13. On December 29, 2009, the Tribe engaged the dispute-resolution procedures of Part 12 of the Compact and delivered a "Notice of Dispute" to Oklahoma. A true and correct copy of that Notice is attached hereto as Exhibit "4". (Ex. 11, McBride Decl., ¶12; Ex. 3, Resolution, ¶1(C) and (D).)

14. Part 12(1) provides procedures for the Tribe and Oklahoma to attempt to resolve a dispute under the Compact by agreement. On January 22, 2010, the Tribe and Oklahoma met through their respective representatives, the Tribe's Chief and Oklahoma's Governor's office, to attempt to resolve the jurisdictional disputes arising under the Compact. That meeting resulted in an agreement executed by the Tribe's Chief on January 27, 2010, and by the Governor of Oklahoma on February 8, 2010, resolving the dispute (the "Resolution"). A true and correct copy of the Resolution is attached hereto as Exhibit "3". (Ex. 10, Wallace Decl., ¶7.)

15. In view of the Oklahoma Supreme Court's prior refusal to consider the affidavits of the Governor and State Treasurer in Cossey, as reflected in the separate opinions of Justice Kauger, the Tribe also determined to invoke the arbitration clause under Part 12(2) of the Compact as an alternate resolution procedure. (Ex. 10, Wallace Decl., ¶11.)

16. On March 1, 2010, the Tribe and Oklahoma jointly referred the dispute to binding arbitration. Again, Judge Phillips served as the sole Arbitrator. In the arbitration, the Tribe relied both on the Resolution it had reached with the State under Part 12(1) of the Compact and proper interpretation of the Compact

itself under controlling federal and Oklahoma law. A true and correct copy of the Joint Referral is attached hereto as Exhibit "5". (Ex. 10, Wallace Decl., ¶ 12.)

17. On April 5, 2010, Judge Phillips rendered award mirroring the Choctaw-Chickasaw arbitration decision (the "Arbitration Award"). A true and correct copy of the Arbitration Award is attached hereto as Exhibit "2".<sup>3</sup> (Ex. 10, Wallace Decl., ¶6.)

18. Judge Phillips based this new Arbitration Award solely on the proper interpretation of the Compact under controlling federal law and held that Oklahoma had exceeded its jurisdiction under the Compact and was violating the Tribe's sovereign immunity. The Arbitrator found it unnecessary to reach the Tribe's contention that the parties' Resolution under Part 12(1) of the Compact required the same result. (Ex. 2, Arbitration Award, p.6.) The April 5, 2010 Arbitration Award expressly adopts and incorporates by reference "the same

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<sup>3</sup> Ex. 2 includes only the 13-page April 5, 2010 Arbitration Award without its three attached exhibits. However, the three exhibits are separate exhibits hereto. They are:

- A) Model Tribal Gaming Compact between Oklahoma and Eastern Shawnee Tribe of Oklahoma and the appropriate federal approvals (Ex. 1 herein)
- B) Arbitration Award dated August 25, 2009 in favor of the Chickasaw and Choctaw Nations and against Oklahoma and relevant attachments (Ex. 6 herein); and
- C) Resolution of Dispute Arising Under the State-Tribal Gaming Compact Between the State of Oklahoma and the Eastern Shawnee Tribe of Oklahoma executed January 27, 2010 (by Tribe) and February 8, 2010 (by Oklahoma) (Ex. 3 herein).

legal analysis, findings, and conclusions adopted in the August 25, 2009 Arbitration Decision" (Choctaw-Chickasaw arbitration decision), which the Arbitrator attached to the Award and which is included as Exhibit 6 to this motion. (Ex. 2, Arbitration Award, p.9.)

19. Part 12(3) of the Compact provides that enforcement or review of an arbitration decision may be brought by either party against the other in a federal district court. Under Parts 12(2) and (3) of the Compact, both parties waive immunity and consent to arbitration and federal litigation to review the arbitration award for the purpose of enforcing the provisions of the Compact. In the Joint Referral, the parties "agree to the entry of judgment on, and/or review of the resulting Arbitration Award in the United States District Court of the Western District of Oklahoma under the terms and conditions established by Parts 12(2) and 12(3) of those Compacts." (Ex. 1, Compact, Part 12; Ex. 5, Joint Referral.)

20. Absent an expeditious resolution of this controversy, the Tribe is threatened with continuing violations of its sovereign immunity and the Compact, by being subjected to suits in Oklahoma state courts asserting tort and prize claims falling within Part 6 of the Compact. (Ex. 10, Wallace Decl., ¶13; Ex. 11, McBride Decl., ¶¶ 10-11 and Exhibit of cases thereto.)

## **ARGUMENT AND AUTHORITIES**

### **I. STANDARD FOR SUMMARY JUDGMENT**

The Court should grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if

any, show that there is no genuine issues as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). When applying this standard, a court must view the evidence, and draw reasonable inferences from it, in the light most favorable to the nonmoving party. *Byers v. City of Albuquerque*, 150 F.3d 1271, 1274 (10th Cir. 1998). Once the moving party meets its burden, the burden then shifts to the nonmoving party to demonstrate that genuine issues remain for trial. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986). Moreover, "the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). "The mere existence of a scintilla of evidence in support of the nonmovant's position is insufficient to create a dispute of fact that is 'genuine'; an issue of material fact is only genuine if the nonmovant presents facts such that a reasonable jury could find in favor of the nonmovant." *Lawmaster v. Ward*, 125 F.3d 1341, 1347 (10th Cir. 1997).

## **II. A DISPUTE HAS ARISEN WITHIN THE MEANING OF PART 12 OF THE COMPACT**

Part 12 of the Compact provides specific procedures for resolving "any dispute" under the Compact, including a contention that a party "has failed to comply with any requirement of this Compact" or "a dispute over the proper interpretation of the terms and conditions of this Compact." (Ex. 1, Compact,

Part 12, first paragraph.) The Arbitrator found that a dispute arose within the meaning of this provision. (Ex. 2, Arbitration Award, p.4, under "ANALYSIS.") However, since the Compact provides for *de novo* review of the Arbitration Award (Ex. 1, Part 12(3)), the Tribe reviews the relevant circumstances.

The Tribe contended in arbitration that Oklahoma failed to comply with Parts 6 and 9 of the Compact, and that a dispute arose between Oklahoma and the Tribe as to the proper interpretation of Parts 6 and 9 of the Compact. Specifically, the Tribe contended in arbitration and continues to believe that Oklahoma's courts are wrongfully attempting to exercise jurisdiction over tort claims arising under Part 6(A) of the Compact, notwithstanding that the Compact fails to confer such jurisdiction on such courts and expressly provides (in Part 9) that the Compact does not alter prior jurisdictional limits of such courts. The Tribe has discussed the relevant Oklahoma decisions pertaining to both the Model Tribal Gaming Compact and to its specific Compact, and the Tribe has quoted in ¶ 11 the statement of the state court judge in *Crocker*, which aptly reflects the threat posed to the Tribe's rights by the prevailing Oklahoma judicial stance. The dispute is one now common to all tribes having a compact with Oklahoma under the Model Tribal Gaming Compact. See Klint Cowan, *Tribal Sovereignty vs. State Court Jurisdiction: Whatever Happened to Federal Indian Law?*, 81 OKLA. B.J. 351, 352-55 (Feb. 13, 2010) (discussing *Cossey*, *Griffith*, and *Dye*).

The urgency of the threat to tribal rights is highlighted by the Oklahoma Supreme Court's recent actions in *Griffith* and *Dye*, where the Choctaw Nation sought that Court's recognition and honor of an as-yet *unconfirmed* arbitration award, containing the same findings and legal conclusions as the Arbitration Award sought to be confirmed herein. The Oklahoma courts have made clear that they do not intend to honor either the Compact provisions preserving tribal sovereign immunity, or even an arbitration award under the Compacts recognizing that sovereign immunity.

Oklahoma courts' assertion of jurisdiction over claims involving the Tribe, in accordance with the holdings of *Cossey*, *Griffith*, and *Dye*, gives rise to a dispute within the meaning of Part 12 of the Compact.

It was neither intended nor provided by the parties in the Compact that either government's courts would have the final word on whether one party's courts themselves were violating the Compact. See *Pueblo of Santa Ana v. Kelly*, 932 F.Supp. 1284, 1293-94 (D.N.M.1996) (holding tribal-state compact validity issue "cannot be unilaterally decided by the State, however, as the State is purportedly a party to the compact" -- analogizing to U.S. Supreme Court case law governing interstate compacts).<sup>4</sup> Rather, Part 12 of the Compact provides for

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<sup>4</sup> In addition to authorities discussed below, see *League to Save Lake Tahoe v. B.J.K. Corp.*, 547 F.2d 1072, 1074-1075 (9th Cir. 1976) (holding that federal law governed interpretation of ordinance adopted under interstate compact since conflicting interpretations by the courts of the compact signatories could impair Continued ...

resolution of a dispute by *agreement*, or by *arbitration* followed by *de novo* federal court review.

Federal law controls the interpretation of the Compact. A state-tribal compact under the IGRA must be approved by the Secretary of Interior. 25 U.S.C. §2710(d)(8)(a). The Tribe's contention -- that it has not waived sovereign immunity by entering into the Compact and that Oklahoma is violating its sovereignty -- presents a federal question, not one of Oklahoma state law. *E.g.*, *Cabazon Band of Mission Indians v. Wilson*, 124 F.3d 1050, 1055 -1056 (9th Cir. 1997) (claim based on agreement contained within state-tribal Compacts under the IGRA originated in the Compacts which "quite clearly are a creation of federal law," so the claim "to enforce the Compacts arises under federal law" and the court possessed "jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1362."); *Wis. v. Ho-Chunk Nation*, 512 F.3d 921, 933-34 (7th Cir. 2008) (holding that an alleged tribal-state compact violation relating to any of the seven matters listed by 25 U.S.C. § 2710(d)(3)(C) of the IGRA presents a federal question, including "the allocation of ... civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations"); *Forest County Potawatomi Cmty. v. Norquist*, 45 F.3d 1079, 1082 (7th Cir. 1995) ("The Tribe is seeking to establish the right to operate its video gaming machines free from state or city

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the compact's effective functioning and reliance on U.S. Supreme Court certiorari review is impractical).

interference. That right, if it exists, is a federal right whether its source is the IGRA, the Compact, the Indian Commerce Clause or federal recognition of the inherent sovereign powers of an Indian tribe.”). Additionally, the Oklahoma state actions being filed against tribes throughout that state have been “filed in order to avoid tribal court jurisdiction,” which necessarily raises the federal question of the scope of tribal court sovereignty and exclusive jurisdiction over those same claims. *Gaming World Intern., Ltd. v. White Earth Band of Chippewa Indians*, 317 F.3d 840, 848 (8th Cir. 2003) (citing *National Farmers Union Ins. Co. v. Crow Tribe of Indians*, 471 U.S. 845, 853 (1985)).<sup>5</sup> The Tribe’s purpose herein is to see a definitive resolution of this controversy on independent grounds, which will allow for the summary rejection in pending and any future proceedings of any contrary contention by any party.

Thus, the Compact does not countenance that one party’s courts may render a controlling interpretation of its provisions while the other party claims that it is those very courts that are violating the Compact. The dispute herein

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<sup>5</sup> “Interstate compact cases such as [*State ex rel. Dyer v. Sims*, 341 U.S. 22, 28 (1951)] are analogous to the extent they hold that disputes arising under compacts present a question of federal law because here New Mexico is purportedly a party to agreements with other sovereigns [Indian tribes] just as in the compact cases a state is a party to an agreement with another state.”

*Pueblo of Santa Ana v. Kelly*, 932 F.Supp. 1284, 1294 (D.N.M., 1996). Cf. *Carchman v. Nash*, 473 U.S. 716, 719 (1985) (interstate compact “is a federal law subject to federal construction”); *Petty v. Tenn.-Mo. Bridge Comm’n*, 359 U.S. 275, 279 (1959) (interpretation of interstate compact “is a question of federal law”).

illustrates the wisdom of the Compact's provision for other methods, independent of the pronouncements of either party's courts, to resolve disputes as to the proper application of its provisions. *Pueblo of Santa Ana v. Kelly, supra*; *League to Save Lake Tahoe v. B.J.K. Corp., supra*.

The Tribe here invoked both Compact dispute resolution procedures. The Tribe first obtained an agreement with Oklahoma under Part 12(1) of the Compact. The Tribe then presented that Resolution along with the independent substantive grounds for the same result in arbitration under Part 12(2) of the Compact. The arbitrator found it unnecessary to rely on the Resolution, but entered its Arbitration Award fully concurring with the Tribe's contentions under the Compact -- and holding that Oklahoma courts are exceeding their jurisdiction, violating the Compact's terms, and infringing the Tribe's sovereign immunity. Now, the Tribe seeks confirmation and judgment on that Arbitration Award pursuant to Parts 12(2) and (3) of the Compact. Since review is *de novo*, the Tribe also is entitled to rely upon its Resolution under Part 12(1), and the Tribe seeks recognition of the validity of that Resolution as part of the Court's judgment.

The Tribe discusses each of these two grounds for relief.

### **III. THE TRIBE IS ENTITLED TO CONFIRMATION OF THE ARBITRATION AWARD**

Pursuant to Parts 12(2) and 12(3) of the Compact (Ex. 1) and the Joint Referral (Ex. 5), the Tribe is entitled to confirmation and enforcement of the

Arbitration Award rendered by Hon. Layn R. Phillips on April 5, 2010, including the eleven paragraphs of "Declaratory Relief Granted". (Ex. 2 pp. 10-11.) See also Federal Arbitration Act, 9 U.S.C. §9.

The Arbitration Award presents cogent and compelling grounds for the decision. The Arbitration Award (Ex. 2) expressly adopts and incorporates by reference "the same legal analysis, findings, and conclusions adopted in the August 25, 2009 Arbitration Decision" which the Arbitrator attached to the Award and which is Ex. 6 to this motion. (*Id.*, p.9.) That analysis (Ex. 6, 8/25/09 Arbitration Award) fully sets forth the legal bases for the award. The Arbitration Award herein, like the August 25, 2009 award upon which it is based, is correct and should be confirmed.

#### **IV. JUDGMENT DECLARING VALID THE PARTIES' RESOLUTION UNDER PART 12(1) OF THE COMPACT**

Part 12(1) of the Compact *requires* the parties to meet and attempt to resolve a dispute arising under the Compact. Specifically, that provision states:

The goal of the parties shall be to resolve all disputes amicably and voluntarily whenever possible. A party asserting noncompliance or seeking an interpretation of this Compact first shall serve written notice on the other party. The notice shall identify the specific Compact provision alleged to have been violated or in dispute and shall specify in detail the asserting party's contention and any factual basis for the claim. Representatives of the tribe and state shall meet within thirty (30) days of receipt of notice in an effort to resolve the dispute;

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The Tribe served the required notice. (Ex. 4.) The parties' representatives and their counsel met within 30 days and reached an agreement, which was

executed by the highest executive officials of each government (the Tribe's Chief and Oklahoma's Governor). The Resolution (Ex. 3) provides in relevant part:

1. Before the Compact became effective, Oklahoma state courts lacked jurisdiction over civil actions against the Tribe that arose in Indian Country. Claims under Part 6 of the Compact necessarily arise within the Tribe's Indian Country because the Tribe's gaming facilities are located on lands that qualify as "Indian lands" under the Indian Gaming Regulatory Act. Compact, Part 5(L).
2. Part 9 of the Compact expressly forbids any expansion of State courts' civil jurisdiction: "This Compact shall not alter. . . state civil adjudicatory . . . jurisdiction." Part 6 of the Compact must be construed in accordance with this provision of Part 9. No provision within Part 6 of the Compact waives the Tribe's sovereign immunity or grants the Tribe's consent to be sued in Oklahoma state courts. An Oklahoma state court is not a "court of competent jurisdiction" within the meaning of that term in Part 6(C) of the Compact. The Tribe has not consented to the exercise by the State of jurisdiction over claims arising under Part 6 of the Compact, and the State lacks such jurisdiction.

The Tribe seeks this Court's judgment that the Resolution (Ex. 3) entered by the Tribe and Oklahoma is valid and binding. The Tribe additionally invoked arbitration because Oklahoma courts are apparently in disagreement with the executive decisions of the State of Oklahoma and, seemingly, have taken matters into their own hands. The Oklahoma Supreme Court has already refused to honor the Choctaw-Chickasaw arbitration award, as set forth in the Statement of Undisputed Facts. That Court has also made clear that it will not even give credence to the State's highest executive officials (who signed the Model Tribal Gaming Compact into law and negotiated that compact with the tribes) as to the parties' *mutual intent* in executing the Compact. The state

district court in *Crocker* -- an action against the Tribe itself -- openly declared to the parties (after instructing the court reporter not to make a record yet) that it would give no credence to an arbitration decision, or the position of the Governor of Oklahoma, or a federal court ruling -- because that court answers only to the Oklahoma Supreme Court.<sup>6</sup>

Thus, the Tribe claimed in arbitration that Oklahoma's *courts* are violating the Compact by asserting jurisdiction over claims which the parties agreed would be restricted to the Tribe's courts. As discussed above, since Oklahoma's *judicial* branch is claimed to be thwarting the parties' mutual intent under the Compact, the Tribe invoked both alternative procedures under Part 12 of the Compact in an exhaustive effort to ensure that the parties' mutual intent is honored and enforced.

The Tribe is threatened with further violation of its Compact rights absent the binding and authoritative judgment of a federal court. An Oklahoma court is required to honor a federal court's judgment on a matter of federal law regardless of whether it is willing to recognize tribal rights under a Compact, an arbitration award, or a binding agreement of its executive branch of government. The Tribe

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<sup>6</sup> Upon information and belief, other Oklahoma state district courts besides Ottawa County, including courts in Bryan, Comanche, LeFlore, Osage, Pittsburg, Rogers and Tulsa Counties, have also purported to exercise jurisdiction over other Oklahoma Indian tribal governments in Compact-based, Indian country-arising tort lawsuits, in violation of those tribes' compacts. (Ex. 11, McBride Decl., ¶10.)

and Oklahoma's agreement resolving the dispute is an independent and viable basis for resolving the parties' controversy. (Ex. 3, Resolution.) The Tribe seeks a declaratory judgment determining that the parties' agreement under Part 12(1) is binding on Oklahoma and prevents an Oklahoma court from exercising jurisdiction over tort or prize claims under Part 6 of the Compact.

### **CONCLUSION**

The undisputed material facts show that the Tribe is entitled to summary judgment (1) confirming the Arbitration Award (Ex. 2) issued under Part 12(2) of the Compact; and (2) declaring that the parties' Resolution (Ex. 3) under Part 12(1) of the Compact is binding on Oklahoma and prevents an Oklahoma court from exercising jurisdiction over tort or prize claims under Part 6 of the Compact.

Respectfully submitted,

s/ D. Michael McBride III

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 12th day of May, 2010 I electronically transmitted the foregoing document to the Clerk of the Court using the ECF system for filing and transmittal of a Notice of Electronic Filing to all registered on the ECF System, and specifically to the following ECF recipients:

Stephen Cortes  
General Counsel  
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Oklahoma, OK 73105

s/ D. Michael McBride III

# **EXHIBIT 1**

MODEL TRIBAL GAMING COMPACT

ENR. S. B. NO. 1252

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Between the [Name of Tribe]

and the STATE OF OKLAHOMA

This Compact is made and entered into by and between the [Name of Tribe], a federally recognized Indian tribe ("tribe"), and the State of Oklahoma ("state"), with respect to the operation of covered games (as defined herein) on the tribe's Indian lands as defined by the Indian Gaming Regulatory Act, 25 U.S.C., Section 2703(4).

Part 1. TITLE

This document shall be referred to as the "[Name of Tribe] and State of Oklahoma Gaming Compact".

Part 2. RECITALS

1. The tribe is a federally recognized tribal government possessing sovereign powers and rights of self-government.
2. The State of Oklahoma is a state of the United States of America possessing the sovereign powers and rights of a state.
3. The state and the tribe maintain a government-to-government relationship, and this Compact will help to foster mutual respect and understanding among Indians and non-Indians.
4. The United States Supreme Court has long recognized the right of an Indian tribe to regulate activity on lands within its jurisdiction.
5. The tribe desires to offer the play of covered games, as defined in paragraphs 5, 10, 11 and 12 of Part 3 of this Compact, as a means of generating revenues for purposes authorized by the Indian Gaming Regulatory Act, 25 U.S.C., Section 2701, et seq., including without limitation the support of tribal governmental programs, such as health care, housing, sewer and water projects, police, corrections, fire, judicial services, highway and bridge construction, general assistance for tribal elders, day care for the children, economic development, educational opportunities and other typical and valuable governmental services and programs for tribal members.
6. The state recognizes that the positive effects of this Compact will extend beyond the tribe's lands to the tribe's neighbors and surrounding communities and will generally benefit all of Oklahoma. These positive effects and benefits may include not only those described in paragraph 5 of this Part, but also may include increased tourism and related economic development activities.
7. The tribe and the state jointly wish to protect their citizens from any criminal involvement in the gaming operations regulated under this Compact.

Part 3. DEFINITIONS

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As used in this Compact:

1. "Adjusted gross revenues" means the total receipts received from the play of all covered games minus all prize payouts;
2. "Annual overnight assessment" means the assessment described in subsection B of Part 11 of this Compact;
3. "Central computer" means a computer to which player terminals are linked to allow competition in electronic bonanza-style bingo games;
4. "Compact" means this Tribal Gaming Compact between the state and the tribe, entered into pursuant to Sections 21 and 22 of the State-Tribal Gaming Act;
5. "Covered game" means the following games conducted in accordance with the standards, as applicable, set forth in Sections 11 through 18 of the State-Tribal Gaming Act: an electronic bonanza-style bingo game, an electronic amusement game, an electronic instant bingo game, nonhouse-banked card games; any other game, if the operation of such game by a tribe would require a compact and if such game has been: (i) approved by the Oklahoma Horse Racing Commission for use by an organizational licensee, (ii) approved by state legislation for use by any person or entity, or (iii) approved by amendment of the State-Tribal Gaming Act; ~~and open election by the tribe by written supplement to this Compact, any Class II game in use by the tribe, provided that no exclusivity payments shall be required for the operation of such Class II game.~~
6. "Covered game employee" means any individual employed by the enterprise or a third party providing management services to the enterprise, whose responsibilities include the rendering of services with respect to the operation, maintenance or management of covered games. The term "covered game employee" includes, but is not limited to, the following: managers and assistant managers; accounting personnel; surveillance and security personnel; cashiers, supervisors, and floor personnel; cage personnel; and any other person whose employment duties require or authorize access to areas of the facility related to the conduct of covered games or the maintenance or storage of covered game components. This shall not include upper level tribal employees or tribe's elected officials so long as such individuals are not directly involved in the operation, maintenance, or management of covered game components. The enterprise may, at its discretion, include other persons employed at or in connection with the enterprise within the definition of covered game employee;
7. "Documents" means books, records, electronic, magnetic and computer media documents and other writings and materials, copies thereof, and information contained therein;
8. "Effective date" means the date on which the last of the conditions set forth in subsection A of Part 15 of this Compact have been met;

G. ORIA DURBIN

Notary Public, Notary Seal

STATE OF OKLAHOMA

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9. "Electronic accounting system" means an electronic system that provides a secure means to receive, store and access data and record critical functions and activities, as set forth in the State-Tribal Gaming Act;

10. "Electronic amusement game" means a game that is played in an electronic environment in which a player's performance and opportunity for success can be improved by skill that conforms to the standards set forth in the State-Tribal Gaming Act;

11. "Electronic bonanza-style bingo game" means a game played in an electronic environment in which some or all of the numbers or symbols are drawn or electronically determined before the electronic bingo cards for that game are sold that conforms to the standards set forth in the State-Tribal Gaming Act;

12. "Electronic instant bingo game" means a game played in an electronic environment in which a player wins if his or her electronic instant bingo card contains a combination of numbers or symbols that was designated in advance of the game as a winning combination. There may be multiple winning combinations in each game and multiple winning cards that conform to the standards set forth in the State-Tribal Gaming Act;

13. "Enterprise" means the tribe or the tribal agency or section of tribal management with direct responsibility for the conduct of covered games, the tribal business enterprise that conducts covered games, or a person, corporation or other entity that has entered into a management contract with the tribe to conduct covered games, in accordance with IGRA. The names, addresses and identifying information of any covered game employees shall be forwarded to the SCA at least annually. In any event, the tribe shall have the ultimate responsibility for ensuring that the tribe or enterprise fulfills the responsibilities under this Compact. For purposes of enforcement, the tribe is deemed to have made all promises for the enterprise;

14. "Facility" means any building of the tribe in which the covered games authorized by this Compact are conducted by the enterprise, located on Indian lands as defined by IGRA. The tribe shall have the ultimate responsibility for ensuring that a facility conforms to the Compact as required herein;

15. "Game play credits" means a method of representing value obtained from the exchange of cash or cash equivalents, or earned as a prize, in connection with electronic gaming. Game play credits may be redeemed for cash or a cash equivalent;

16. "Player terminals" means electronic or electromechanical terminals housed in cabinets with input devices and video screens or electromechanical displays on which players play electronic bonanza-style bingo games, electronic instant bingo games or electronic amusement games;

17. "Independent testing laboratory" means a laboratory of national reputation that is demonstrably competent and qualified to scientifically test and evaluate devices for compliance with this

Compact and to otherwise perform the functions assigned to it in this Compact. An independent testing laboratory shall not be owned or controlled by the tribe, the enterprise, an organizational licensee as defined in the State-Tribal Gaming Act, the state, or any manufacturer, supplier or operator of gaming devices. The selection of an independent testing laboratory for any purpose under this Compact shall be made from a list of one or more laboratories mutually agreed upon by the parties; provided that the parties hereby agree that any laboratory upon which the National Indian Gaming Commission has relied for such testing may be utilized for testing required by this Compact;

18. "IGRA" means the Indian Gaming Regulatory Act, Pub. L. 100-497, Oct. 17, 1988, 102 Stat. 2467, codified at 25 U.S.C., Section 2701 et seq. and 18 U.S.C., Sections 1166 to 1168;

19. "Nonhouse-banked card games" means any card game in which the tribe has no interest in the outcome of the game, including games played in tournament formats and games in which the tribe collects a fee from the player for participating, and all bets are placed in a common pool or pot from which all player winnings, prizes and direct costs are paid. As provided herein, administrative fees may be charged by the tribe against any common pool in an amount equal to any fee paid the state; provided that the tribe may seed the pool as it determines necessary from time to time;

20. "Patron" means any person who is on the premises of a gaming facility, for the purpose of playing covered games authorized by this Compact;

21. "Principal" means, with respect to any entity, its sole proprietor or any partner, trustee, beneficiary or shareholder holding five percent (5%) or more of its beneficial or controlling ownership, either directly or indirectly, or any officer, director, principal management employee, or key employee thereof;

22. "Rules and regulations" means the rules and regulations promulgated by the Tribal Compliance Agency for implementation of this Compact;

23. "Standards" means the descriptions and specifications of electronic amusement games, electronic bonanza-style bingo games and electronic instant bingo games or components thereof as set forth in Sections 11 through 18 of the State-Tribal Gaming Act as enacted in 2004 or as amended pursuant to paragraph 27 of this Part or subsection D of Part 13 of this Compact, including technical specifications for component parts, requirements for cashless transaction systems, software tools for security and audit purposes, and procedures for operation of such games;

24. "State" means the State of Oklahoma;

25. "State Compliance Agency" ("SCA") means the state agency that has the authority to carry out the state's oversight responsibilities under this Compact, which shall be the Office of State Finance or its successor agency. Nothing herein shall

supplant the role or duties of the Oklahoma State Bureau of Investigation under state law. The Oklahoma Horse Racing Commission and the Oklahoma Tax Commission shall have no role in regulating or oversight of any gaming conducted by a tribe;

26. "Tribal Compliance Agency" ("TCA") means the tribal governmental agency that has the authority to carry out the tribe's regulatory and oversight responsibilities under this Compact. Unless and until otherwise designated by the tribe, the TCA shall be the [Name of Tribe] Gaming Commission. No covered game employee may be a member or employee of the TCA. The tribe shall have the ultimate responsibility for ensuring that the TCA fulfills its responsibilities under this Compact. The members of the TCA shall be subject to background investigations and licensed to the extent required by any tribal or federal law, and in accordance with subsection B of Part 7 of this Compact. The tribe shall ensure that all TCA officers and agents are qualified for such position and receive ongoing training to obtain and maintain skills that are sufficient to carry out their responsibilities in accordance with industry standards;

27. "State-Tribal Gaming Act" means the legislation in which this Model Tribal Gaming Compact is set forth and, at the tribe's option, amendments or successor statutes thereto;

28. "Tribal law enforcement agency" means a police or security force established and maintained by the tribe pursuant to the tribe's powers of self-government to carry out law enforcement duties at or in connection with a facility; and

29. "Tribe" means the [Name of Nation].

#### Part 4: AUTHORIZATION OF COVERED GAMES

A. The tribe and state agree that the tribe is authorized to operate covered games only in accordance with this Compact. However, nothing in this Compact shall limit the tribe's right to operate any game that is Class II under IGRA and no Class II games shall be subject to the exclusivity payments set forth in Part 11 of this Compact. In the case of electronic bonanza-style bingo games, there have been disagreements between tribes and federal regulators as to whether or not such games are Class II. Without conceding that such games are Class III, the tribe has agreed to compact with the state to operate the specific type of electronic bonanza-style bingo game described in this Compact to remove any legal uncertainty as to the tribe's right to lawfully operate the game. Should the electronic bonanza-style bingo game or the electronic instant bingo game described in this act be determined to be Class II by the NIGC or a federal court, then the tribe shall have the option to operate such games outside of this Compact; provided, any obligations pursuant to subsection F of Part 11 of this Compact shall not be affected thereby.

B. A tribe shall not operate an electronic bonanza-style bingo game, an electronic instant bingo game or an electronic amusement game pursuant to this Compact until such game has been certified by an independent testing laboratory and the TCA as meeting the

standards set out in the State-Tribal Gaming Act for electronic bonanza-style bingo games, electronic instant bingo games or electronic amusement games, as applicable or any standards contained in the Oklahoma Horse Racing Commission rules issued pursuant to subsection B of Section 9 the State-Tribal Gaming Act that modify the standards for such games that may be conducted by organizational licensees. Provided, the tribe may rely on any certification of an electronic bonanza-style bingo game, an electronic instant bingo, or electronic amusement games by the Oklahoma Horse Racing Commission which was obtained by an organization licensee pursuant to the State-Tribal Gaming Act to establish certification compliance under this Compact. The tribe may also rely on any certification of an electronic bonanza-style bingo game, electronic instant bingo or an electronic amusement game by the TCA obtained by another tribe which has entered into the model compact to establish certification compliance under this Compact.

**Part 5. RULES AND REGULATIONS; MINIMUM REQUIREMENTS FOR OPERATIONS**

A. Regulations. At all times during the Term of this Compact, the tribe shall be responsible for all duties which are assigned to it, the enterprise, the facility, and the TCA under this Compact. The tribe shall promulgate any rules and regulations necessary to implement this Compact, which at a minimum shall expressly include or incorporate by reference all provisions of Part 5 and the procedural requirements of Part 6 of this Compact. Nothing in this Compact shall be construed to affect the tribe's right to amend its rules and regulations, provided that any such amendment shall be in conformity with this Compact. The SCA may propose additional rules and regulations related to implementation of this Compact to the TCA at any time, and the TCA shall give good faith consideration to such suggestions and shall notify the SCA of its response or action with respect thereto.

B. Compliance; Internal Control Standards. All enterprises and facilities shall comply with, and all covered games approved under the procedures set forth in this Compact shall be operated in accordance with the requirements set forth in this Compact, including, but not limited to, those set forth in subsections C and D of this Part. In addition, all enterprises and facilities shall comply with tribal internal control standards that provide a level of control that equals or exceeds those set forth in the National Indian Gaming Commission's Minimum Internal Control Standards (25 C.F.R., Part 542).

C. Records. In addition to other records required to be maintained herein, the enterprise or tribe shall maintain the following records related to implementation of this Compact in permanent form and as written or entered, whether manually or by computer, and which shall be maintained by the enterprise and made available for inspection by the SCA for no less than three (3) years from the date generated:

1. A log recording all surveillance activities in the monitoring room of the facility, including, but not limited to, surveillance records kept in the normal course of enterprise

operations and in accordance with industry standards; provided, notwithstanding anything to the contrary herein, surveillance records may, at the discretion of the enterprise, be destroyed if no incident has been reported within one (1) year following the date such records were made. Records, as used in this Compact, shall include video tapes and any other storage media;

2. Payout from the conduct of all covered games;

3. Maintenance logs for all covered games gaming equipment used by the enterprise;

4. Security logs as kept in the normal course of conducting and maintaining security at the facility, which at a minimum shall conform to industry practices for such reports. The security logs shall document any unusual or nonstandard activities, occurrences or events at or related to the facility or in connection with the enterprise. Each incident, without regard to materiality, shall be assigned a sequential number for each such report. At a minimum, the security logs shall consist of the following information, which shall be recorded in a reasonable fashion noting:

- a. the assigned number of the incident.
- b. the date of the incident,
- c. the time of the incident.
- d. the location of the incident,
- e. the nature of the incident,
- f. the identity, including identification information, of any persons involved in the incident and any known witnesses to the incident, and
- g. the tribal compliance officer making the report and any other persons contributing to its preparation;

5. Books and records on all covered game activities of the enterprise shall be maintained in accordance with generally accepted accounting principles (GAAP); and

6. All documents generated in accordance with this Compact.

D. Use of Net Revenues. Net revenues that the tribe receives from covered games are to be used for any one or more of those purposes permitted under IGRA:

1. To fund tribal government operations or programs;
2. To provide for the general welfare of the tribe and its members;
3. To promote tribal economic development;
4. To donate to charitable organizations; or

5. To help fund operations of local government agencies.

E. 1. The tribe's rules and regulations shall require the enterprise at a minimum to bar persons based on their prior conduct at the facility or who, because of their criminal history or association with criminal offenders, pose a threat to the integrity of the conduct of covered games.

2. The TCA shall establish a list of the persons barred from the facility.

3. The enterprise shall employ its best efforts to exclude persons on such list from entry into its facility; provided, neither persons who are barred but gain access to the facility, nor any other person, shall have any claim against the state, the tribe or the enterprise or any other person for failing to enforce such bar.

4. Patrons who believe they may be playing covered games on a compulsive basis may request that their names be placed on the list. All covered game employees shall receive training on identifying players who have a problem with compulsive playing and shall be instructed to ask them to leave. Signs and other materials shall be readily available to direct such compulsive players to agencies where they may receive counseling.

F. Audits. 1. Consistent with 25 C.F.R., Section 571.12, Audit Standards, the TCA shall ensure that an annual independent financial audit of the enterprise's conduct of covered games subject to this Compact is secured. The audit shall, at a minimum, examine revenues and expenses in connection with the conduct of covered games in accordance with generally accepted auditing standards and shall include, but not be limited to, those matters necessary to verify the determination of adjusted gross revenues and the basis of the payments made to the state pursuant to Part 11 of this Compact.

2. The auditor selected by the TCA shall be a firm of known and demonstrable experience, expertise and stature in conducting audits of this kind and scope.

3. The audit shall be concluded within five (5) months following the close of each calendar year, provided that extensions may be requested by the tribe and shall not be refused by the state where the circumstances justifying the extension request are beyond the tribe's control.

4. The audit of the conduct of covered games may be conducted as part of or in conjunction with the audit of the enterprise, but if so conducted shall be separately stated for the reporting purposes required herein.

5. The audit shall conform to generally accepted auditing standards. As part of the audit report, the auditor shall certify to the TCA that, in the course of the audit, the auditor discovered no matters within the scope of the audit which were determined or believed to be in violation of any provision of this Compact.

6. The enterprise shall assume all costs in connection with the audit.

7. The audit report for the conduct of covered games shall be submitted to the SCA within thirty (30) days of completion. The auditor's work papers concerning covered games shall be made available to the SCA upon request.

8. Representatives of the SCA may, upon request, meet with the auditors to discuss the work papers, the audit or any matters in connection therewith; provided, such discussions are limited to covered games information and pursue legitimate state covered games interests.

9. Rules for Play of and Prizes for Covered Games. Summaries of the rules for playing covered games and winning prizes shall be visibly displayed in the facility. Complete sets of rules shall be available in pamphlet form in the facility.

10. Supervisory Line of Authority. The enterprise shall provide the TCA and SCA with a chart of the supervisory lines of authority with respect to those directly responsible for the conduct of covered games, and shall promptly notify those agencies of any material changes thereto.

11. Sale of Alcoholic Beverages. The sale and service of alcoholic beverages in a facility shall be in compliance with state, federal and tribal law in regard to the licensing and sale of such beverages.

12. Age Restrictions. No person who would not be eligible to be a patron of a pari-mutuel system of wagering pursuant to the provisions of subsection B of Section 208.4 of Title 3A of the Oklahoma Statutes shall be admitted into any area in a facility where covered games are played, nor be permitted to operate, or obtain a prize from or in connection with the operation of, any covered game, directly or indirectly.

13. Destruction of Documents. Enterprise books, records and other materials documenting the conduct of covered games shall be destroyed only in accordance with rules and regulations adopted by the TCA, which at a minimum shall provide as follows:

1. Material that might be utilized in connection with a potential tort claim pursuant to Part 6 of this Compact, including, but not limited to, incident reports, surveillance records, statements, and the like, shall be maintained at least one (1) year beyond the time which a claim can be made under Part 6 of this Compact or, if a tort claim is made, beyond the final disposition of such claim;

2. Material that might be utilized in connection with a prize claim, including but not limited to incident reports, surveillance records, statements, and the like, shall be maintained at least one hundred eighty (180) days beyond the time which a claim can be made under Part 6 of this Compact or, if a prize claim is made, beyond the final disposition of such claim; and

3. Notwithstanding anything herein to the contrary, all enterprise books and records with respect to the conduct of covered games or the operation of the enterprise, including, but not limited to, all interim and final financial and audit reports and materials related thereto which have been generated in the ordinary course of business, shall be maintained for the minimum period of three (3) years.

L. Location. The tribe may establish and operate enterprises and facilities that operate covered games only on its Indian lands as defined by IGRA. The tribe shall notify the SCA of the operation of any new facility following the effective date of this Compact. Nothing herein shall be construed as expanding or otherwise altering the term "Indian lands", as that term is defined in the IGRA, nor shall anything herein be construed as altering the federal process governing the tribal acquisition of "Indian lands" for gaming purposes.

M. Records of Covered Games. The TCA shall keep a record of, and shall report at least quarterly to the SCA, the number of covered games in each facility, by the name or type of each and its identifying number.

#### PART 6. TORT CLAIMS; PRIZE CLAIMS; LIMITED CONSENT TO SUIT

A. Tort Claims. The enterprise shall ensure that patrons of a facility are afforded due process in seeking and receiving just and reasonable compensation for a tort claim for personal injury or property damage against the enterprise arising out of incidents occurring at a facility, hereinafter "tort claim", as follows:

1. During the term of this Compact, the enterprise shall maintain public liability insurance for the express purposes of covering and satisfying tort claims. The insurance shall have liability limits of not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) for any one person and Two Million Dollars (\$2,000,000.00) for any one occurrence for personal injury, and One Million Dollars (\$1,000,000.00) for any one occurrence for property damage, hereinafter the "limit of liability", or the corresponding limits under the Governmental Tort Claims Act, whichever is greater. No tort claim shall be paid, or be the subject of any award, in excess of the limit of liability;

2. The tribe consents to suit on a limited basis with respect to tort claims subject to the limitations set forth in this subsection and subsection C of this Part. No consents to suit with respect to tort claims, or as to any other claims against the tribe shall be deemed to have been made under this Compact, except as provided in subsections B and C of this Part;

3. The enterprise's insurance policy shall include an endorsement providing that the insurer may not invoke tribal sovereign immunity in connection with any claim made within the limit of liability if the claim complies with the limited consent provisions of subsection C of this Part. Copies of all such insurance policies shall be forwarded to the SCA;

4. Any patron having a tort claim shall file a written tort claim notice by delivery to the enterprise or the TCA. The date the tort claim notice is filed with the enterprise or the TCA shall be deemed the official date of filing the tort claim notice. The tort claim notice shall be filed within one (1) year of the date of the event which allegedly caused the claimed loss. Failure to file the tort claim notice during such period of time shall forever bar such tort claim; provided that a tort claim notice filed with the enterprise or the TCA more than ninety (90) days, but within one (1) year, after the event shall be deemed to be timely filed, but any judgment thereon shall be reduced by ten percent (10%).

5. If the tort claim notice is filed with the TCA, the TCA shall forward a copy of the tort claim to the enterprise and the SCA within forty-eight (48) hours of filing, and if the tort claim notice is filed with the enterprise, the enterprise shall forward a copy of the tort claim to the TCA and the SCA within forty-eight (48) hours of filing;

6. The tort claim notice shall state the date, time, place and circumstances of the incident upon which the tort claim is based, the identity of any persons known to have information regarding the incident, including employees or others involved in or who witnessed the incident, the amount of compensation and the basis for said relief; the name, address and telephone number of the claimant, and the name, address and telephone number of any representative authorized to act or settle the claim on behalf of the claimant;

7. All tort claim notices shall be signed by the claimant. The rules and regulations may additionally require that the tort claim notices be signed under oath. The rules and regulations may also require that as a condition of prosecuting tort claims, the claimant shall appear to be interviewed or deposed at least once under reasonable circumstances, which shall include the attendance of the claimant's legal counsel if requested; provided that the enterprise shall afford claimant at least thirty (30) days' written notice of the interview or deposition; and provided further that the claimant's failure to appear without cause for any interview or deposition properly noticed pursuant to this paragraph shall be deemed a voluntary withdrawal of the tort claim;

8. The enterprise shall promptly review, investigate, and make a determination regarding the tort claim. Any portion of a tort claim which is unresolved shall be deemed denied if the enterprise fails to notify the claimant in writing of its approval within ninety (90) days of the filing date, unless the parties by written agreement extend the date by which a denial shall be deemed issued if no other action is taken. Each extension shall be for no more than ninety (90) days, but there shall be no limit on the number of written agreements for extensions, provided that no written agreement for extension shall be valid unless signed by the claimant and an authorized representative of the enterprise. The claimant and the enterprise may continue attempts to settle a claim beyond an extended date; provided, settlement negotiations shall not extend the date of denial in the absence of a written agreement for extension as required by this paragraph;

9. A judicial proceeding for any cause arising from a tort claim may be maintained in accordance with and subject to the limitations of subsection C of this Part only if the following requirements have been met:

- a. the claimant has followed all procedures required by this Part, including, without limitation, the delivery of a valid and timely written tort claim notice to the enterprise,
- b. the enterprise has denied the tort claim, and
- c. the claimant has filed the judicial proceeding no later than the one-hundred-eightieth day after denial of the claim by the enterprise; provided, that neither the claimant nor the enterprise may agree to extend the time to commence a judicial proceeding; and

10. Notices explaining the procedure and time limitations with respect to making a tort claim shall be prominently posted in the facility. Such notices shall explain the method and places for making a tort claim, that this procedure is the exclusive method of making a tort claim, and that claims that do not follow these procedures shall be forever barred. The enterprise shall make pamphlets containing the requirements in this subsection readily available to all patrons of the facility and shall provide such pamphlets to a claimant within five (5) days of the filing of a claim.

B. Prize Claims. The enterprise shall ensure that patrons of a facility are afforded due process in seeking and receiving just and reasonable compensation arising from a patron's dispute, in connection with his or her play of any covered game, the amount of any prize which has been awarded, the failure to be awarded a prize, or the right to receive a refund or other compensation, hereafter "prize claim", as follows:

1. The tribe consents to suit on a limited basis with respect to prize claims against the enterprise only as set forth in subsection C of this Part; no consents to suit with respect to prize claims, or as to any other claims against the tribe shall be deemed to have been made under this Compact, except as provided in subsections A and C of this Part;

2. The maximum amount of any prize claim shall be the amount of the prize which the claimant establishes he or she was entitled to be awarded, hereafter "prize limit";

3. Any patron having a prize claim shall file a written prize claim notice by delivery to the enterprise or the TCA. The date the prize claim is filed with the enterprise or the TCA shall be deemed the official date of filing the prize claim notice. The prize claim notice shall be filed within ten (10) days of the event which is the basis of the claim. Failure to file the prize claim notice during such period of time shall forever bar such prize claim;

4. If the prize claim notice is filed with the TCA, the TCA shall forward a copy of the prize claim to the enterprise and the SCA within forty-eight (48) hours of its filing; and if the prize claim notice is filed with the enterprise, the enterprise shall forward a copy of the tort claim to the TCA and the SCA within forty-eight (48) hours of filing;

5. The written prize claim notice shall state the date, time, place and circumstances of the incident upon which the prize claim is based, the identity of any persons known to have information regarding the incident, including employees or others involved in or who witnessed the incident, the amount demanded and the basis for said amount, the name, address and telephone number of the claimant, and the name, address and telephone number of any representative authorized to act or settle the claim on behalf of the claimant;

6. All notices of prize claims shall be signed by the claimant. The rules and regulations may additionally require that the prize claim notices be signed under oath;

7. The enterprise shall promptly review, investigate and make a determination regarding the prize claim. Claimants shall cooperate in providing information, including personal sworn statements and agreeing to be interviewed, as the enterprise shall reasonably request. The claimant is permitted to have counsel present during any such interview;

8. If the prize claim is not resolved within seventy-two (72) hours from the time of filing the claim in accordance with paragraph 5 of this subsection, the TCA shall immediately notify the SCA in writing that the claim has not been resolved;

9. In the event the claim is resolved, the TCA shall not be obligated to report that fact to the SCA, but shall make TCA reports available for review;

10. Any portion of a prize claim which is unresolved shall be deemed denied if the enterprise fails to notify the claimant in writing of its approval within thirty (30) days of the filing date, unless the parties agree by written agreement to extend the date. Each extension shall be for no more than thirty (30) days, but there shall be no limit on the number of written agreements for extensions; provided, that no written agreements for extension shall be valid unless signed by the claimant and an authorized representative of the TCA. The claimant and the enterprise may continue attempts to settle a claim beyond an extended date; provided, settlement negotiations shall not extend the date of denial in the absence of a written extension required by this paragraph;

11. A judicial proceeding for any cause arising from a prize claim may be maintained in accordance with and subject to the limitations of subsection C of this Part only if the following requirements have been met:

- a. the claimant has followed all procedures required by this Part, including without limitation, the delivery

of a valid and timely written prize claim notice to the enterprise,

- b. the enterprise has denied the prize claim, and
- c. the claimant has filed the judicial proceeding no later than one hundred eighty (180) days after denial of the claim by the enterprise; provided that neither the claimant nor the enterprise may extend the time to commence a judicial proceeding; and

12. Notices explaining the procedure and time limitations with respect to making a prize claim shall be prominently posted in the facility. Such notices shall explain the method and places for making claims, that this procedure is the exclusive method of making a prize claim, and that claims that do not follow this procedure shall be forever barred. The enterprise shall make pamphlets containing the requirements in this subsection readily available to all patrons of the facility and shall provide such pamphlets to a claimant by the TCA within five (5) days of the filing date of a claim.

C. Limited Consent to Suit for Tort Claims and Prize Claims. The tribe consents to suit against the enterprise in a court of competent jurisdiction with respect to a tort claim or prize claim if all requirements of paragraph 9 of subsection A or all requirements of paragraph 11 of subsection B of this Part have been met; provided that such consent shall be subject to the following additional conditions and limitations:

1. For tort claims, consent to suit is granted only to the extent such claim or any award or judgment rendered thereon does not exceed the limit of liability. Under no circumstances shall any consent to suit be effective as to any award which exceeds such applicable amounts. This consent shall only extend to the patron actually claiming to have been injured. A tort claim shall not be assignable. In the event any assignment of the tort claim is made in violation of this Compact, or any person other than the patron claiming the injury becomes a party to any action hereunder, this consent shall be deemed revoked for all purposes. Notwithstanding the foregoing, consent to suit shall not be revoked if an action on a tort claim is filed by (i) a court appointed representative of a claimant's estate, (ii) an indispensable party, or (iii) a health provider or other party subrogated to the claimant's rights by virtue of any insurance policy; provided, that nothing herein is intended to, or shall constitute a consent to suit against the enterprise as to such party except to the extent such party's claim is:

- a. in lieu of and identical to the claim that would have been made by the claimant directly but for the appointment of said representative or indispensable party, and participation of such other party is in lieu of and not in addition to pursuit of the claim by the patron, and

- b. the claim of such other party would have been subject to a consent to suit hereunder if it had been made by the claimant directly; and

2. For prize claims, consent is granted only to the extent such claim does not exceed the prize limit. Under no circumstances shall any award exceed the prize limit. This consent shall only extend to the patron actually claiming to have engaged in the play of a covered game on which the claim is based. Prize claims shall not be assignable. In the event any assignment of the prize claim is made, or any person other than the claimant entitled to make the claim becomes a party to any action hereunder, this consent shall be deemed revoked for all purposes. Notwithstanding the foregoing, consent to suit shall not be revoked if an action on a prize claim is filed by (i) a court-appointed representative of a claimant's estate, or (ii) an indispensable party, provided that nothing herein is intended to, or shall constitute a consent to suit against the enterprise as to such party except to the extent such party's claim is:

- a. in lieu of and identical to the claim that would have been made by the claimant directly but for the appointment of said representative or indispensable party, and participation of such other party is in lieu of and not in addition to pursuit of the claim by the patron, and
- b. the claim of such other party would have been subject to a consent to suit hereunder if it had been made by the claimant directly.

D. Remedies in the Event of No or Inadequate Insurance for Tort Claim. In the event a tort claim is made and there is no, or inadequate, insurance in effect as required under this Compact, the enterprise shall be deemed to be in default hereunder unless, within ten (10) days of a demand by the SCA or a claimant to do so, the enterprise has posted in an irrevocable escrow account at a state or federally chartered bank which is not owned or controlled by the tribe, sufficient cash, a bond or other security sufficient to cover any award that might be made within the limits set forth in paragraph 1 of subsection A of this Part, and informs the claimant and the state of:

1. The posting of the cash or bond;
2. The means by which the deposit can be independently verified as to the amount and the fact that it is irrevocable until the matter is finally resolved;
3. The right of the claimant to have this claim satisfied from the deposit if the claimant is successful on the claim; and
4. The notice and hearing opportunities in accordance with the tribe's tort law, if any, otherwise in accordance with principles of due process, which will be afforded to the claimant so that the intent of this Compact to provide claimants with a meaningful

opportunity to seek a just remedy under fair conditions will be fulfilled.

Part 7. ENFORCEMENT OF COMPACT PROVISIONS

A. The tribe and TCA shall be responsible for regulating activities pursuant to this Compact. As part of its responsibilities, the tribe shall require the enterprise do the following:

1. Operate the conduct of covered games in compliance with this Compact, including, but not limited to, the standards and the tribe's rules and regulations;
2. Take reasonable measures to assure the physical safety of enterprise patrons and personnel, prevent illegal activity at the facility, and protect any rights of patrons under the Indian Civil Rights Act, 25 U.S.C., Sec. 1302-1303;
3. Promptly notify appropriate law enforcement authorities of persons who may be involved in illegal acts in accordance with applicable law;
4. Assure that the construction and maintenance of the facility meets or exceeds federal and tribal standards for comparable buildings; and
5. Prepare adequate emergency access plans to ensure the health and safety of all covered game patrons. Upon the finalization of emergency access plans, the TCA or enterprise shall forward copies of such plans to the SCA.

B. All licenses for members and employees of the TCA shall be issued according to the same standards and terms applicable to facility employees. The TCA shall employ qualified compliance officers under the authority of the TCA. The compliance officers shall be independent of the enterprise, and shall be supervised and accountable only to the TCA. A TCA compliance officer shall be available to the facility during all hours of operation upon reasonable notice, and shall have immediate access to any and all areas of the facility for the purpose of ensuring compliance with the provisions of this Compact. The TCA shall investigate any such suspected or reported violation of this Compact and shall require the enterprise to correct such violations. The TCA shall officially enter into its files timely written reports of investigations and any action taken thereon, and shall forward copies of such reports to the SCA within fifteen (15) days of such filing. Any such violations shall be reported immediately to the TCA, and the TCA shall immediately forward the same to the SCA. In addition, the TCA shall promptly report to the SCA any such violations which it independently discovers.

C. In order to develop and foster a positive and effective relationship in the enforcement of the provisions of this Compact, representatives of the TCA and the SCA shall meet, not less than on an annual basis, to review past practices and examine methods to improve the regulatory scheme created by this Compact. The meetings

shall take place at a location mutually agreed to by the TCA and the SCA. The SCA, prior to or during such meetings, shall disclose to the TCA any concerns, suspected activities, or pending matters reasonably believed to possibly constitute violations of this Compact by any person, organization or entity, if such disclosure will not compromise the interest sought to be protected.

Part 8. STATE MONITORING OF COMPACT

A. The SCA shall, pursuant to the provisions of this Compact, have the authority to monitor the conduct of covered games to ensure that the covered games are conducted in compliance with the provisions of this Compact. In order to properly monitor the conduct of covered games, agents of the SCA shall have reasonable access to all areas of the facility related to the conduct of covered games as provided herein:

1. Access to the facility by the SCA shall be during the facility's normal operating hours only; provided that to the extent such inspections are limited to areas of the facility where the public is normally permitted, SCA agents may inspect the facility without giving prior notice to the enterprise;

2. Any suspected or claimed violations of this Compact or of law shall be directed in writing to the TCA; SCA agents shall not interfere with the functioning of the enterprise; and

3. Before SCA agents enter any nonpublic area of the facility, they shall provide proper photographic identification to the TCA. SCA agents shall be accompanied in nonpublic areas of the facility by a TCA agent. A one-hour notice by SCA to the TCA may be required to assure that a TCA officer is available to accompany SCA agents at all times.

B. Subject to the provisions herein, agents of the SCA shall have the right to review and copy documents of the enterprise related to its conduct of covered games. The review and copying of such documents shall be during normal business hours or hours otherwise at tribe's discretion. However, the SCA shall not be permitted to copy those portions of any documents of the enterprise related to its conduct of covered games that contain business or marketing strategies or other proprietary and confidential information of the enterprise, including, but not limited to, customer lists, business plans, advertising programs, marketing studies, and customer demographics or profiles. No documents of the enterprise related to its conduct of covered games or copies thereof shall be released to the public by the state under any circumstances. All such documents shall be deemed confidential documents owned by the tribe and shall not be subject to public release by the state.

C. At the completion of any SCA inspection or investigation, the SCA shall forward a written report thereof to the TCA. The TCA shall be apprised on a timely basis of all pertinent, nonconfidential information regarding any violation of federal, state, or tribal laws, the rules or regulations, or this Compact. Nothing herein prevents the SCA from contacting tribal or federal

law enforcement authorities for suspected criminal wrongdoing involving the TCA. TCA may interview SCA inspectors upon reasonable notice and examine work papers and SCA in the same fashion that SCA inspectors may examine auditors' notes and make auditor inquiry, unless providing such information to the TCA will compromise the interests sought to be protected. If the SCA determines that providing the information to the TCA will compromise the interests sought to be protected, then the SCA shall provide such information to the tribe in accordance with Part 13 of this Compact.

D. Nothing in this Compact shall be deemed to authorize the state to regulate the tribe's government, including the TCA, or to interfere in any way with the tribe's selection of its governmental officers, including members of the TCA; provided, however, the SCA and the tribe, upon request of the tribe, shall jointly employ, at the tribe's expense, an independent firm to perform on behalf of the SCA the duties set forth in subsections A and B of this Part.

#### Part 9. JURISDICTION

This Compact shall not alter tribal, federal or state civil adjudicatory or criminal jurisdiction.

#### Part 10. LICENSING

A. 1. Except as provided in paragraph 4 of Part 3, no covered game employee shall be employed at a facility or by an enterprise unless such person is licensed in accordance with this Compact. In addition to the provisions of this Part which are applicable to the licensing of all covered game employees, the requirements of 25 C.F.R., Part 556, Background Investigations for Primary Management Officials and Key Employees, and 25 C.F.R., Part 558, Gaming Licenses for Key Employees and Primary Management Officials, apply to Key Employees and Primary Management Officials of the facility and enterprise.

2. All prospective covered game employees shall apply to the TCA for a license. Licenses shall be issued for periods of no more than two (2) years, after which they may be renewed only following review and update of the information upon which the license was based; provided, the TCA may extend the period in which the license is valid for a reasonable time pending the outcome of any investigation being conducted in connection with the renewal of such license. In the event the SCA contends that any such extension is unreasonable, it may seek resolution of that issue pursuant to Part 11 of this Compact.

3. The application process shall require the TCA to obtain sufficient information and identification from the applicant to permit a background investigation to determine if a license should be issued in accordance with this Part and the rules and regulations. The TCA shall obtain information about a prospective covered game employee that includes:

- a. full name, including any aliases by which applicant has ever been known,

- b. social security number,
- c. date and place of birth,
- d. residential addresses for the past five (5) years,
- e. employment history for the past five (5) years,
- f. driver license number,
- g. all licenses issued and disciplinary charges filed, whether or not discipline was imposed, by any state or tribal regulatory authority,
- h. all criminal arrests and proceedings, except for minor traffic offenses, to which the applicant has been a party,
- i. a set of fingerprints,
- j. a current photograph,
- k. military service history, and
- l. any other information the TCA determines is necessary to conduct a thorough background investigation.

4. Upon obtaining the required initial information from a prospective covered game employee, the TCA shall forward a copy of such information to the SCA, along with any determinations made with respect to the issuance or denial of a temporary or permanent license. The SCA may conduct its own background investigation of the applicant at SCA expense, shall notify the TCA of such investigation within a reasonable time from initiation of the investigation, and shall provide a written report to the TCA of the outcome of such investigation within a reasonable time from the receipt of a request from the TCA for such information. SCA inspector field notes and the SCA inspector shall be available upon reasonable notice for TCA review and inquiry.

5. The TCA may issue a temporary license for a period not to exceed ninety (90) days, and the enterprise may employ on a probationary basis, any prospective covered game employee who represents in writing that he or she meets the standards set forth in this Part, provided the TCA or enterprise is not in possession of information to the contrary. The temporary license shall expire at the end of the ninety-day period or upon issuance or denial of a permanent license, whichever event occurs first. Provided that the temporary license period may be extended at the discretion of the TCA so long as good faith efforts are being made by the applicant to provide required information, or the TCA is continuing to conduct its investigation or is waiting on information from others, and provided further that in the course of such temporary or extended temporary licensing period, no information has come to the attention of the TCA which, in the absence of countervailing information then in the record, would otherwise require denial of license. A permanent license shall be issued or denied within a reasonable time

following the completion of the applicant's background investigation:

6. In covered gaming the tribe shall not employ and shall terminate, and the TCA shall not license and shall revoke a license previously issued to, any covered game employee who:

- a. has been convicted of any felony or an offense related to any covered games or other gaming activity,
- b. has knowingly and willfully provided false material, statements or information on his or her employment application, or
- c. is a person whose prior activities, criminal record, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of the conduct of covered games, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of covered games or the carrying on of the business and financial arrangements incidental thereto.

7. The SCA may object to the employment of any individual by the enterprise based upon the criteria set forth in paragraph 6 of subsection A of this Part. Such objection shall be in writing setting forth the basis of the objection. The SCA inspector's work papers, notes and exhibits which formed the SCA conclusion shall be available upon reasonable notice for TCA review. The enterprise shall have discretion to employ an individual over the objection of the SCA.

8. The TCA shall have the discretion to initiate or continue a background investigation of any licensee or license applicant and to take appropriate action with respect to the issuance or continued validity of any license at any time, including suspending or revoking such license.

9. The TCA shall require all covered game employees to wear, in plain view, identification cards issued by the TCA which include a photograph of the employee, his or her first name, a four-digit identification number unique to the licensee issued to the employee, a tribal seal or signature verifying official issuance of the card, and a date of expiration, which shall not extend beyond such employee's license expiration date.

B. 1. Any person or entity who, directly or indirectly, provides or is likely to provide at least Twenty-five Thousand Dollars (\$25,000.00) in goods or services to the enterprise in any twelve-month period, or who has received at least Twenty-five Thousand Dollars (\$25,000.00) for goods or services provided to the enterprise in any consecutive twelve-month period within the immediately preceding twenty-four-month period, or any person or entity who provides through sale, lease, rental or otherwise covered games, or parts, maintenance or service in connection therewith to the tribe or the enterprise at any time and in any amount, shall be

licensed by the TCA prior to the provision thereof. Provided, that attorneys or certified public accountants and their firms shall be exempt from the licensing requirement herein to the extent that they are providing services covered by their professional licenses.

2. Background investigations and licensing shall follow the same process and apply the same criteria as for covered game employees set forth in paragraph 6 of subsection A of this Part.

3. In the case of a license application of any entity, all principals thereof shall be subjected to the same background investigation required for the licensing of a covered game employee, but no license as such need be issued; provided, no license shall be issued to the entity if the TCA determines that one or more of its principals will be persons who would not be qualified to receive a license if they applied as covered game employees.

4. Nothing herein shall prohibit the TCA from processing and issuing a license to a principal in his or her own name.

5. Licenses issued under this subsection shall be reviewed at least every two (2) years for continuing compliance, and shall be promptly revoked if the licensee is determined to be in violation of the standards set forth in paragraph 6 of subsection A of this Part. In connection with such a review, the TCA shall require the person or entity to update all information provided in the previous application.

6. The enterprise shall not enter into, or continue to make payments pursuant to, any contract or agreement for the provision of goods or services with any person or entity who does not meet the requirements of this Part including, but not limited to, any person or entity whose application to the TCA for a license has been denied, or whose license has expired or been suspended or revoked.

7. Pursuant to 25 C.F.R., Part 533, all management contracts must be approved by the Chair of the National Indian Gaming Commission. The SCA shall be notified promptly after any such approval.

8. In addition to any licensing criteria set forth above, if any person or entity seeking licensing under this subsection is to receive any fee or other payment based on the revenues or profits of the enterprise, the TCA may take into account whether or not such fee or other payment is fair in light of market conditions and practices.

C. 1. Subject to the exceptions set forth in paragraph 4 of this subsection, any person or entity extending financing, directly or indirectly, to the facility or enterprise in excess of Fifty Thousand Dollars (\$50,000.00) in any twelve-month period shall be licensed prior to providing such financing. Principals thereof shall be subjected to background investigations and determinations in accordance with the procedures and standards set forth in subsection A of this Part. Licenses issued under this section shall be reviewed at least every two (2) years for continuing compliance, and shall be promptly revoked if the licensee is determined to be in

violation of the standards set forth in paragraph 6 of subsection A of this Part. In connection with such a review, the TCA shall require the person or entity to update all information provided in the previous application.

2. The SCA shall be notified of all financing and loan transactions with respect to covered games or supplies in which the amount exceeds Fifty Thousand Dollars (\$50,000.00) in any twelve-month period, and shall be entitled to review copies of all agreements and documents in connection therewith.

3. A supplier of goods or services who provides financing exclusively in connection with the sale or lease of covered games equipment or supplies shall be licensed solely in accordance with licensing procedures applicable, if at all, to such suppliers herein.

4. Financing provided by a federally regulated or state-regulated bank, savings and loan, or trust, or other federally or state-regulated lending institution; any agency of the federal, state, tribal or local government; or any person or entity, including, but not limited to, an institutional investor who, alone or in conjunction with others, lends money through publicly or commercially traded bonds or other commercially traded instruments, including but not limited to the holders of such bonds or instruments or their assignees or transferees, or which bonds or commercially traded instruments are underwritten by any entity whose shares are publicly traded or which underwriter, at the time of the underwriting, has assets in excess of One Hundred Million Dollars (\$100,000,000.00), shall be exempt from the licensing and background investigation requirements in subsection B of this Part or this subsection.

D. In the event the SCA objects to a lender, vendor or any other person or entity within subsection B or C of this Part, seeking to do business with the enterprise, or to the continued holding of a license by such person or entity, it may notify the TCA of its objection. The notice shall set forth the basis of the objection with sufficient particularity to enable the TCA to investigate the basis of the objection. The SCA inspector and SCA inspector field notes shall be available for TCA review and inquiry. Within a reasonable time after such notification, the TCA shall report to the SCA on the outcome of its investigation and of any action taken or decision not to take action.

#### Part 11. EXCLUSIVITY AND FEES

A. The parties acknowledge and recognize that this Compact provides tribes with substantial exclusivity and, consistent with the goals of IGRA, special opportunities for tribal economic opportunity through gaming within the external boundaries of Oklahoma in respect to the covered games. In consideration thereof, so long as the state does not change its laws after the effective date of this Compact to permit the operation of any additional form of gaming by any such organization licensee, or change its laws to permit any additional electronic or machine gaming within Oklahoma, the tribe agrees to pay the following fees:

1. The tribe covenants and agrees to pay to the state a fee derived from covered game revenues calculated as set forth in paragraph 2 of this subsection. Such fee shall be paid no later than the twentieth day of the month for revenues received by the tribe in the preceding month; and

2. The fee shall be:

- a. four percent (4%) of the first Ten Million Dollars (\$10,000,000.00) of adjusted gross revenues received by a tribe in a calendar year from the play of electronic amusement games, electronic bonanza-style bingo games and electronic instant bingo games,
- b. five percent (5%) of the next Ten Million Dollars (\$10,000,000.00) of adjusted gross revenues received by a tribe in a calendar year from the play of electronic amusement games, electronic bonanza-style bingo games and electronic instant bingo games,
- c. six percent (6%) of all subsequent adjusted gross revenues received by a tribe in a calendar year from the play of electronic amusement games, electronic bonanza-style bingo games and electronic instant bingo games, and
- d. ten percent (10%) of the monthly net win of the common pool(s) or pot(s) from which prizes are paid for nonhouse-banked card games. The tribe is entitled to keep an amount equal to state payments from the common pool(s) or pot(s) as part of its cost of operating the games.

Payments of such fees shall be made to the Treasurer of the State of Oklahoma. Nothing herein shall require the allocation of such fees to particular state purposes, including, but not limited to, the actual costs of performing the state's regulatory responsibilities hereunder.

B. Annual oversight assessment: In addition to the fee provided for in subsection A of this Part, the state shall be entitled to payment for its costs incurred in connection with the oversight of covered games to the extent provided herein, "annual oversight assessment". The annual oversight assessment, which shall be Thirty-five Thousand Dollars (\$35,000.00), shall be determined and paid in advance on a fiscal year basis for each twelve (12) months ending on June 30 of each year.

C. Upon the effective date of this Compact, the tribe shall deposit with the SCA the sum of Fifty Thousand Dollars (\$50,000.00) ("start-up assessment"). The purpose of the start-up assessment shall be to assist the state in initiating its administrative and oversight responsibilities hereunder and shall be a one-time payment to the state for such purposes.

D. Nothing in this Compact shall be deemed to authorize the state to impose any tax, fee, charge or assessment upon the tribe or enterprise except as expressly authorized pursuant to this Compact; provided that, to the extent that the tribe is required under federal law to report prizes awarded, the tribe agrees to copy such reports to the SCA.

E. In consideration for the covenants and agreements contained herein, the state agrees that it will not, during the term of this Compact, permit the nontribal operation of any machines or devices to play covered games or electronic or mechanical gaming devices otherwise presently prohibited by law within the state in excess of the number and outside of the designated locations authorized by the State-Tribal Gaming Act. The state recognizes the importance of this provision to the tribe and agrees, in the event of a breach of this provision by the state, to require any nontribal entity which operates any such devices or machines in excess of such number or outside of the designated location to remit to the state at least quarterly no less than fifty percent (50%) of any increase in the entities' adjusted gross revenues following the addition of such excess machines. The state further agrees to remit at least quarterly to eligible tribes, as liquidated damages, a sum equal to fifty percent (50%) of any increase in the entities' adjusted gross revenues following the addition of such excess machines. For purposes of this Part, "eligible tribes" means those tribes which have entered into this Compact and are operating gaming pursuant to this Compact within forty-five (45) miles of an entity which is operating covered game machines in excess of the number authorized by, or outside of the location designated by, the State-Tribal Gaming Act. Such liquidated damages shall be allocated pro rata to eligible tribes based on the number of covered game machines operated by each Eligible Tribe in the time period when such adjusted gross revenues were generated.

F. In consideration for the covenants and agreements contained herein, the tribe agrees that in the event it has currently or locates in the future a facility within a radius of twenty (20) miles from a recipient licensee as that term is defined in subsection K of Section 4 of the State-Tribal Gaming Act that it shall comply with the requirements of subsection K of Section 4 of the State-Tribal Gaming Act.

#### Part 12. DISPUTE RESOLUTION

In the event that either party to this Compact believes that the other party has failed to comply with any requirement of this Compact, or in the event of any dispute hereunder, including, but not limited to, a dispute over the proper interpretation of the terms and conditions of this Compact, the following procedures may be invoked:

1. The goal of the parties shall be to resolve all disputes amicably and voluntarily whenever possible. A party asserting noncompliance or seeking an interpretation of this Compact first shall serve written notice on the other party. The notice shall identify the specific Compact provision alleged to have been violated or in dispute and shall specify in detail the asserting

party's contention and any factual basis for the claim. Representatives of the tribe and state shall meet within thirty (30) days of receipt of notice in an effort to resolve the dispute;

2. Subject to the limitation set forth in paragraph 3 of this Part, either party may refer a dispute arising under this Compact to arbitration under the rules of the American Arbitration Association (AAA), subject to enforcement or pursuant to review as provided by paragraph 3 of this Part by a federal district court. The remedies available through arbitration are limited to enforcement of the provisions of this Compact. The parties consent to the jurisdiction of such arbitration forum and court for such limited purposes and no other, and each waives immunity with respect thereto. One arbitrator shall be chosen by the parties from a list of qualified arbitrators to be provided by the AAA. If the parties cannot agree on an arbitrator, then the arbitrator shall be named by the AAA. The expenses of arbitration shall be borne equally by the parties.

A party asserting noncompliance or seeking an interpretation of this Compact under this section shall be deemed to have certified that to the best of the party's knowledge, information, and belief formed after reasonable inquiry, the claim of noncompliance or the request for interpretation of this Compact is warranted and made in good faith and not for any improper purpose, such as to harass or to cause unnecessary delay or the needless incurring of the cost of resolving the dispute. If the dispute is found to have been initiated in violation of this Part, the Arbitrator, upon request or upon his or her own initiative, shall impose upon the violating party an appropriate sanction, which may include an award to the other party of its reasonable expenses incurred in having to participate in the arbitration; and

3. Notwithstanding any provision of law, either party to the Compact may bring an action against the other in a federal district court for the de novo review of any arbitration award under paragraph 2 of this Part. The decision of the court shall be subject to appeal. Each of the parties hereto waives immunity and consents to suit therein for such limited purposes, and agrees not to raise the Eleventh Amendment to the United States Constitution or comparable defense to the validity of such waiver.

Nothing herein shall be construed to authorize a money judgment other than for damages for failure to comply with an arbitration decision requiring the payment of monies.

#### Part 13. CONSTRUCTION OF COMPACT; FEDERAL APPROVAL

A. Each provision, section, and subsection of this Compact shall stand separate and independent of every other provision, section, or subsection. In the event that a federal district court shall find any provision, section, or subsection of this Compact to be invalid, the remaining provisions, sections, and subsections of this Compact shall remain in full force and effect, unless the invalidated provision, section or subsection is material.

B. Each party hereto agrees to defend the validity of this Compact and the legislation in which it is embodied. This Compact

shall constitute a binding agreement between the parties and shall survive any repeal or amendment of the State-Tribal Gaming Act.

C. The parties shall cooperate in seeking approval of this Compact from an appropriate federal agency as a tribal-state compact under the Indian Gaming Regulatory Act.

D. The standards for electronic bonanza-style bingo games, electronic instant bingo games and electronic amusement games established in the State-Tribal Gaming Act as enacted in 2004, and, at the election of the tribe, any standards contained in the Oklahoma Horseracing Commission rules issued pursuant to subsection B of Section 9 of the State-Tribal Gaming Act are hereby incorporated in this Compact and shall survive any repeal of the State-Tribal Gaming Act, or any games authorized thereunder. In the event that any of said standards are changed by amendment of the State-Tribal Gaming Act, the tribe shall have the option to incorporate said changes into this Compact by delivery of written notice of said changes to the Governor and the SCA.

Part 14. NOTICES

All notices required under this Compact shall be given by certified mail, return receipt requested, commercial overnight courier service, or personal delivery, to the following persons:

Governor

Chair, State-Tribal Relations Committee

Attorney General

[Principal Chief, Governor or Chair]

[Name of Tribe]

[Address]

With copies to:

Part 15. DURATION AND NEGOTIATION

A. This Compact shall become effective upon the last date of the satisfaction of the following requirements:

1. Due execution on behalf of the tribe, including obtaining all tribal resolutions and completing other tribal procedures as may be necessary to render the tribe's execution effective;

2. Approval of this Compact by the Secretary of the Interior as a tribal-state compact within the meaning of IGRA and publication in the Federal Register or satisfaction of any other requirement of federal law; and

3. Payment of the start-up assessment provided for in subsection C of Part 11 of this Compact.

B. This Compact shall have a term which will expire on January 1, 2020, and at that time, if organization licensees or others are authorized to conduct electronic gaming in any form other than pari-mutuel wagering on live horse racing pursuant to any governmental action of the state or court order following the effective date of this Compact, the Compact shall automatically renew for successive additional fifteen-year terms; provided that, within one hundred eighty (180) days of the expiration of this Compact or any renewal thereof, either the tribe or the state, acting through its Governor, may request to renegotiate the terms of subsections A and E of Part 11 of this Compact.

C. This Compact shall remain in full force and effect until the sooner of expiration of the term or until the Compact is terminated by mutual consent of the parties.

D. This Compact may be terminated by state upon thirty (30) days' prior written notice to the tribe in the event of either (1) a material breach by the tribe of the terms of a tobacco Compact with the state as evidenced by a final determination of material breach from the dispute resolution forum agreed upon therein, including exhaustion of all available appellate remedies therefrom, or (2) the tribe's failure to comply with the provisions of Section 346 et seq. of Title 58 of the Oklahoma Statutes, provided that the tribe may cure either default within the thirty-day notice period, or within such additional period as may be reasonably required to cure the default, in order to preserve continuation of this Compact.

The state hereby agrees that this subsection is severable from this Compact and shall automatically be severed from this Compact in the event that the United States Department of the Interior determines that these provisions exceed the state's authority under IGRA.

Part 16. AUTHORITY TO EXECUTE

This Compact, as an enactment of the people of Oklahoma, is deemed approved by the State of Oklahoma. No further action by the state or any state official is necessary for this Compact to take effect upon approval by the Secretary of the Interior and publication in the Federal Register. The undersigned tribal official(s) represents that he or she is duly authorized and has the authority to execute this Compact on behalf of the tribe for whom he or she is signing.

APPROVED:

(Name of Tribe)

*Charles Conyers*

[CHIEF EXECUTIVE OFFICER]

Date

*11-8-04*

SECTION 23. This act shall become effective upon approval by the people.

SECTION 24. The Ballot Title for the proposed act shall be in the following form:

BALLOT TITLE

Legislative Referendum No. \_\_\_\_\_

State Question No. \_\_\_\_\_

THE GIST OF THE PROPOSITION IS AS FOLLOWS:

This measure creates the State-Tribal Gaming Act. It would allow some types of gaming machines at some horse race tracks in this state. The Oklahoma Horse Racing Commission would oversee the new types of gaming machines. It would require that a portion of the money wagered on such gaming be paid to the state. Some of the money would go to purses for horse races. Some of the money would go to the horse race tracks. The measure also provides a model compact which Indian tribes may enter into and then operate such gaming machines on Indian lands. The model compact provides regulatory controls for the gaming authorized by the compact. The Office of State Finance would have the authority to oversee this gaming by the tribes. The money wagered on such gaming would go to horse race tracks, purses for horse races, and the tribes. The state's portion of the money from the gaming authorized by this act would go for treatment of compulsive gambling disorders, to the Education Reform Revolving Fund and for college scholarships.

SHALL THIS ACT BE APPROVED BY THE PEOPLE?

☐ YES, FOR THE ACT

☐ NO, AGAINST THE ACT

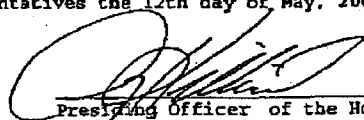
SECTION 25. The President Pro Tempore of the Senate shall, immediately after the passage of this order for legislative referendum, prepare and file in accordance with Section 3 of Article V of the Oklahoma Constitution, one copy of this order for legislative referendum, set forth in Sections 2 through 24 of this act, including the Ballot Title set forth in SECTION 24, with the Secretary of State and one copy with the Attorney General.

SECTION 26. REPEALER Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 of Enrolled Senate Bill No. 553 of the 2nd Session of the 49th Oklahoma Legislature, are hereby repealed.

Passed the Senate the 11th day of May, 2004.

  
Presiding Officer of the Senate

Passed the House of Representatives the 12th day of May, 2004.

  
Presiding Officer of the House  
of Representatives

Deemed Approved

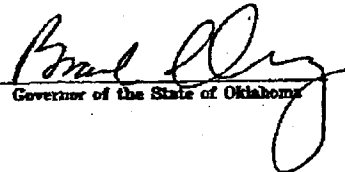
DEC 30 2004

OFFICE OF THE GOVERNOR

Received by the Governor this 13<sup>th</sup>  
day of May, 20 04  
at 11:00 o'clock a M.

By: Angela Wyatt

Approved by the Governor of the State of Oklahoma the 19 day of  
May, 20 04, at 6:04 o'clock p M.

  
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this  
19<sup>th</sup> day of May, 20 04  
at 6:30 o'clock p M.

By: M. Susan Lewis

encountered in the dark zones of caves and/or mesocaverns. Viable populations of these arthropods require a dependable source of nutrient input, typically in the form of roots from overlying perennial plants.

The primary threats to these species include: Small populations and restricted range; urban and agricultural development as well as quarrying operations; non-native species preying upon or competing with them for limited food resources; human visitation and uses of caves; urban and commercial pesticide; biocontrol agents; and extended drought which alters the high-humidity environment to which these arthropods are adapted, which also facilitates invasion by nonnative species.

Downlisting to threatened may be considered for both species when nine viable populations, spread across the known range, are shown to be: (1) Self-sustaining; (2) stable or increasing; (3) protected from non-native/predatory species, human visitation to caves, bio-control agents, pesticides, development or other damaging land uses; and (4) with the habitat being utilized in a fashion consistent with conservation, as evidenced by monitoring over a 10-year period.

Delisting of both species may be considered when 12 viable populations, spread across the known range, are shown to be: (1) Self-sustaining; (2) stable or increasing; (3) protected from non-native/predatory species, human visitation to caves, bio-control agents, pesticides, development or other damaging land uses; and (4) with the habitat being utilized in a fashion consistent with conservation, as evidenced by monitoring over a 20-year period. In addition, a post-delisting monitoring plan and agreement to continue post-delisting monitoring must be in place and ready for implementation at the time of delisting. Monitoring populations following delisting will verify the ongoing recovery and conservation of the species and provide a means of assessing the continuing effectiveness of management actions.

#### Public Comments Solicited

We solicit written comments on the draft recovery plan as described. All comments received by the date specified above will be considered prior to approval of this plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: November 18, 2004.  
David J. Wesley,  
Acting Regional Director, Region 1.  
[FR Doc. 05-2492 Filed 2-8-05; 8:45 am]  
BILLING CODE 4310-55-P

#### DEPARTMENT OF THE INTERIOR

##### Bureau of Indian Affairs Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Class III Gaming Compacts taking effect.

SUMMARY: Notice is given that the Tribal-State Compacts between the Eastern Shawnee Tribe, the Choctaw Tribe, the Citizen Potawatomi Nation and the State of Oklahoma are considered to have been approved and are in effect.

DATES: Effective Dates: February 9, 2005.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219-4068.

SUPPLEMENTARY INFORMATION: Under Section 11(d)(7)(D) of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100-497, 25 U.S.C. 2710, the Secretary of the Interior must publish in the Federal Register notice of any Tribal-State compact that is approved, or considered to have been approved for the purpose of engaging in Class III gaming activities on Indian lands. The Acting Principal Deputy Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority did not approve or disapprove these compacts before the date that is 45 days after the date these compacts were submitted. These compacts authorize Indian tribes to engage in certain Class III gaming activities, provides for certain geographical exclusivity, limits the number of gaming machines at existing racetracks, and prohibits non-tribal operation of certain machines and covered games. Therefore, pursuant to 25 U.S.C. 2710(d)(7)(C), these compacts are considered to have been approved, but only to the extent they are consistent with IGRA.

Dated: January 28, 2005.  
Michael D. Olsen,  
Acting Principal Deputy Assistant Secretary—Indian Affairs.  
[FR Doc. 05-2462 Filed 2-8-05; 8:45 am]  
BILLING CODE 4310-04-P

#### DEPARTMENT OF THE INTERIOR

##### Bureau of Land Management [ES-960-1910-BJ-4489, ES-053126]

##### Group No. 38, Illinois; Eastern States; Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plat of survey; Illinois.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM-Eastern States, Springfield, Virginia, 30 calendar days from the date of publication in the Federal Register. FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey. SUPPLEMENTARY INFORMATION: This survey was requested by the U.S. Army Corps of Engineers. The lands we surveyed are:

Fourth Principal Meridian, Illinois  
T. 8 S., Rs. 4 and 5 W.

The plat of survey represents the dependent resurvey of portions of the township boundaries, portions of the subdivisional lines and the survey of the Lock and Dam No. 24 acquisition boundary, in Township 8 South, Ranges 4 and 5 West, of the Fourth Principal Meridian, in the State of Illinois, and was accepted on January 28, 2005.

We will place a copy of the plat we described in the open files. It will be made available to the public as a matter of information.

Dated: January 28, 2005.  
Stephen D. Douglas,  
Chief Cadastral Surveyor.  
[FR Doc. 05-2506 Filed 2-8-05; 8:45 am]  
BILLING CODE 4310-03-P

#### DEPARTMENT OF THE INTERIOR

##### Minerals Management Service

##### Outer Continental Shelf (OCS), Alaska Region, Chukchi Sea/Hope Basin and Norton Basin Planning Areas

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Call for information and nominations.

SUMMARY: The Secretary's decision to consider offering the Chukchi Sea/Hope Basin Planning Area and the Norton Basin Planning Area in the OCS Oil and Gas Leasing Program for 2002-2007 provides for an 18-month "special-interest" process beginning with



## United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240



JAN - 6 2006

Honorable Charles D. Enyart  
Chief, Eastern Shawnee Tribe of Oklahoma  
P.O. Box 350  
Seneca, Missouri 64865

Dear Chief Enyart:

On November 15, 2004, we received the Tribal-State Gaming Compact between the Eastern Shawnee Tribe of Oklahoma (Tribe) and the State of Oklahoma (State), executed by the Tribe on November 8, 2004 (Compact).

Under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2710(d)(8)(C), the Secretary of the Interior (Secretary) may approve or disapprove the Compact within forty-five days of its submission. If the Secretary does not approve or disapprove the Compact within forty-five days, the IGRA states that the Compact is considered to have been approved by the Secretary, "but only to the extent the compact is consistent with the provisions of [IGRA]." The IGRA requires the Department of the Interior (Department) to determine whether the Compact violates the IGRA, any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands, or the trust obligations of the United States to Indians.

We have completed our review of the Compact, along with the submission of additional documentation submitted by the parties. As part of the Department's review of the Compact, we sent a letter to the parties seeking clarification of various provisions of the Compact. The responses of the State and the Tribe have resolved most issues, but do not include an economic analysis of the value of the State's concessions in exchange for revenue-sharing payments, which was requested. Therefore, pursuant to Section 11 of the IGRA, the Compact will take effect without Secretarial action, as explained below.

### Revenue Sharing

The Compact is authorized by recent legislation enacted by the State of Oklahoma. Prior to this legislation, Indian tribes in the State of Oklahoma could only operate Class II gaming machines and engage in pari-mutuel wagering. The legislation authorizes Indian tribes to engage in certain Class III gaming activities, provides for certain geographic exclusivity, limits the number of gaming machines at existing racetracks<sup>1</sup>, and prohibits non-tribal operation of certain machines

<sup>1</sup> The State-Tribal Gaming Act authorizes no more than three (3) existing horse racetracks to operate no more than 750 machines.

and covered games.<sup>2</sup> As consideration for these concessions made by the State in enacting this law, the Tribe agrees to pay annually to the State four (4)% of the first \$10 million, five (5)% of the next \$10 million, and six (6)% of any subsequent amount of adjusted gross revenues received by the Tribe from its electronic amusement games, electronic bonanza-style bingo games, and electronic instant bingo games, as well as a monthly ten (10)% payment of net win from the "common pool(s) or pot(s)" of the non-house-banked card games.

The Department has approved more than 200 Tribal-State compacts. Any compact providing for tribal payments other than for direct expenses to defray the costs of regulating the gaming activities under the compact has been carefully scrutinized. This is because the IGRA does not authorize states to impose a tax, fee, charge, or other assessment on Indian tribes to engage in class III gaming. See 25 U.S.C. § 2710(d)(4). This section provides that "nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge or other assessment upon an Indian tribe . . . to engage in a class III gaming activity."

To enforce this statutory prohibition, the Department must determine whether a revenue-sharing provision is permissible under the IGRA. Thus, we have examined whether, in exchange for the payment, a state offers significant or meaningful concessions over which it is not required to negotiate in good faith, resulting in substantial and quantifiable economic benefits to the Indian tribe. In addition, the payment to a state must be appropriate in light of the value of the economic benefits conferred on the tribe.

Under the first prong of our analysis -- significant or meaningful concessions -- we believe that the State has made such concessions. The State has authorized class III gaming for Indian tribes, provided for a zone of exclusivity, and limited non-tribal gaming. We also note that Part 11 also provides for a payment from the State to eligible tribes in the amount of fifty (50)% of any increase in a non-tribal entity's adjusted gross revenues following the addition of machines in excess of the statutory limit on a non-tribal operation. Both the Tribe and State agree that the Compact provides for the cessation of revenue-sharing payments to the State should the exclusive rights of compacting tribes to operate covered games be diminished.

Under the second prong of our analysis -- substantial and quantifiable economic benefits -- the Tribe has not provided the economic analysis that we requested, and thus, we are unable to determine whether the State's concessions will, in fact, result in substantial and quantifiable economic benefits to the Tribe. Nevertheless, we have elected not to disapprove the compact, but let it go into effect by operation of law because many Oklahoma Indian tribes, including this Tribe, have argued that although economic benefits resulting from the compact may not be significant, failure to enter into the compact could place tribes at a significant competitive disadvantage vis-à-vis those tribes that will be authorized to offer class III games under their new compacts.

<sup>2</sup> The term "covered game" is defined in Part 3(5) of the Compact to include an electronic bonanza-style bingo game, an electronic amusement game, an electronic instant bingo game, non-house-banked card games, and any other game under certain conditions.

### Scope of Gaming

It is our view that class III gaming compacts can only regulate class III games, and cannot regulate class II games under the IGRA. We have asked the National Indian Gaming Commission (NIGC) for its views on whether the games described in Part 3(5) of the Compact are all class III games. The NIGC's Office of General Counsel has informed us that, in their view, the electronic bonanza-style bingo game, the electronic amusement game, the electronic instant bingo game, and the non-house banked card games referenced in Part 3(5) are all class III games. However, the Compact contemplates the inclusion of class II games in the last clause of Part 3(5) which authorizes "upon election by the Tribe by written supplement to this Compact, any Class II game in use by the Tribe, provided that no exclusivity payments shall be required for the operation of such class II game." To avoid this problem, the Tribe has agreed to strike this provision from the Compact it submitted to the Department for approval. Since this provision is only triggered at the option of the Tribe, we believe that the Tribe can elect to forego its exercise by striking it from its submitted compact, thus avoiding the issue.

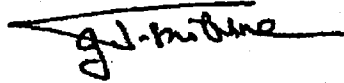
Part 3(5) provides that the definition of "covered game" includes "any other game, if the operation of such game by a tribe would require a compact and if such game has been: (i) approved by the Oklahoma Horse Racing Commission for use by an organizational licensee, (ii) approved by state legislation for use by any person or entity, or (iii) approved by amendment of the State-Tribal Gaming Act. Although the Compact does not indicate whether the addition any other class III games under this provision would require review and approval of the Secretary of the Interior under the IGRA, it is our position that such Secretarial approval is required because the inclusion of additional class III games is a substantial modification of the terms of the Compact. It is our view that a substantive modification is one that potentially implicates any of the three statutory reasons available to the Secretary to disapprove a compact in the first instance, i.e., whether the provision violates the IGRA, any other applicable provision of federal law, or the trust obligation of the United States to Indians. See 25 U.S.C. § 2710(d)(8)(B).

### Compact Termination

Part 15D of the Compact provides, *inter alia*, for termination by the State in the event of a material breach by the Tribe of the terms of a tobacco compact. 25 U.S.C. § 2710(d)(3), however, restricts the proper topics for compact negotiations to those that bear a direct relationship to the operation of gaming activities. Moreover, the legislative history of the IGRA makes clear that Congress intended to prevent compacts from being used as subterfuge for imposing state jurisdiction on tribes concerning issues unrelated to gaming. See S.REP.NO. 100-446, at 14 (1988). Part 15D provides, however, that the State agrees that this subsection is severable from the compact and will be automatically severable in the event the Department determines that these provisions exceed the State's authority under the IGRA. We believe that Part 15D is an inappropriate term for inclusion within this Compact, and we have severed it from other compacts that we have affirmatively approved. We cannot affirmatively sever it from this Compact because this Compact took effect without Secretarial action. We maintain, however, that this provision is inconsistent with the IGRA.

Since we did not approve or disapprove the Compact within 45 days, the Compact is considered to have been approved, but only to the extent the compact is consistent with the provisions of [IGRA]. The Compact takes effect when notice is published in the Federal Register pursuant to Section 11(d)(3)(B) of the IGRA, 25 U.S.C. § 2710(d)(3)(B).

Sincerely,

A handwritten signature in black ink, appearing to read "G. J. M. Dine", written over a horizontal line.

Acting Deputy Assistant Secretary -  
Policy and Economic Development

Identical Letter Addressed to: Honorable Brad Henry  
Governor, State of Oklahoma

# **EXHIBIT 2**

**CLASS III GAMING COMPACT JURISDICTION-RELATED DISPUTE  
JOINTLY REFERRED TO BINDING ARBITRATION BY THE EASTERN  
SHAWNEE TRIBE OF OKLAHOMA AND THE STATE OF OKLAHOMA**

*In the Matter of the Joint Referral to Binding Arbitration by the Eastern  
Shawnee Tribe of Oklahoma and the State of Oklahoma of Dispute Arising  
Under Tribal Gaming Compact*

April 5, 2010

Oklahoma City, Oklahoma

**ARBITRATION AWARD**

Hon. Layn R. Phillips, Sole Arbitrator  
Alternative Dispute Resolution Center  
Irell & Manella LLP  
840 Newport Beach, CA 92660-6324  
Telephone: (949) 760-5288  
Fax: (949) 760-5289

## **INTRODUCTION**

The State of Oklahoma ("Oklahoma") and the Eastern Shawnee Tribe of Oklahoma, a federally recognized tribe ("Tribe"), have jointly submitted to arbitration a dispute arising under the parties' Tribal Gaming Compact ("Compact"). The Compact is attached hereto as Exhibit A. The Compact is the result of the Tribe's acceptance on November 8, 2004 of the Model Tribal Gaming Compact codified at 3A Okla. Stat. § 381.<sup>1</sup> The Tribe's authorized approval was followed by the U.S. Department of Interior's published approval on February 9, 2005, with the same effective date. 70 FED. REG. 6903 (2/9/05).<sup>2</sup> The parties agree that the Compact is effective and binds the parties.

Part 12 of the Compact provides specific procedures for resolving "any dispute" under the Compact, including but not limited to a contention that a party "has failed to comply with any requirement of this Compact," and including but not limited to "a dispute over the proper interpretation of the terms and conditions of this Compact." The Tribe contends that Oklahoma has failed to comply with Parts 6 and 9 of the Compact, and that a dispute has arisen between Oklahoma and the Tribe as to the proper interpretation of Parts 6 and 9 of the Compact. Specifically, the Tribe contends that Oklahoma's courts are wrongfully purporting to exercise jurisdiction over tort claims arising under Part 6 of the Compact,

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<sup>1</sup> The Model Gaming Compact was approved by referendum in Oklahoma on November 2, 2004 as State Question No. 712 (Legis. Ref. No. 335), pursuant to 25 U.S.C. §2710, part of the Indian Gaming Regulatory Act ("IGRA").

<sup>2</sup> Confirmation and terms of the approval of the Department of Interior are set forth in a January 6, 2006 letter from the Acting Deputy Assistant Secretary - Policy and

notwithstanding that the Compact fails to confer such jurisdiction and in Part 9 expressly provides that the Compact does not alter prior jurisdictional limits of Oklahoma courts. The Tribe cites three Oklahoma Supreme Court decisions which have fostered the dispute: *Cossey v. Cherokee Nation Enterprises, LLC*, 2009 OK 6, 212 P.3d 447; *Griffith v. Choctaw Casino of Pocola*, 2009 OK 51; and *Dye v. Choctaw Casino of Pocola*, 2009 OK 52. These same three Oklahoma cases are discussed in a separate arbitration decision by this Arbitrator in an arbitration award concerning the same kind of dispute, arising from identical compacts based on the same Model Tribal Gaming Compact, between Oklahoma and the Choctaw Nation, and Oklahoma and the Chickasaw Nation, respectively. See Class III Gaming Compact Jurisdiction - Related Disputes Jointly Referred to Binding Arbitration by the Choctaw Nation of Oklahoma, the Chickasaw Nation and the State of Oklahoma, Arbitration Award dated August 25, 2009 (hereafter "August 25, 2009 Arbitration Decision"). The August 25, 2009 Arbitration Decision is attached as Exhibit B.

The Tribe proffers three independent legal grounds for holding that Oklahoma courts may not involuntarily assert jurisdiction over claims arising under Part 6 of the Compact. Concisely stated, those three grounds are:

- 1) The Tribe and the Governor of Oklahoma have entered a written agreement which the Tribe contends resolves the dispute at issue here pursuant to Part 12(1) of the Compact, under which the signatories agree that Oklahoma

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Economic Development addressed to the Tribe's then-Chief Charles Enyart with a copy to Oklahoma Governor Brad Henry.

state courts cannot, over the Tribe's protests, assert jurisdiction over claims arising under Part 6 of the Compact, and that the Tribe has not waived its sovereign immunity from the prosecution of such claims in Oklahoma state courts;

2) The August 25, 2009 Arbitration Decision resolving the same legal dispute between Oklahoma and the Choctaw and Chickasaw Nations determined that Oklahoma courts are not authorized under the Compact to exercise jurisdiction over claims arising under Part 6 of the Compact. The Tribe argues that Oklahoma had a full and fair opportunity to litigate the legal questions involved in that proceeding, and thus issue preclusion binds Oklahoma to the same result as the August 25, 2009 Arbitration Decision in the instant dispute; and

3) The Tribe finally contends that the Compact and applicable law require the same result aside from the parties' agreement and issue preclusion, for the same reasons set forth in the August 25, 2009 Arbitration Decision.

The Tribe argues that any one of these three grounds should alone conclude the controversy spawned by *Cossey v. Cherokee Nation Enterprises, LLC*, 2009 OK 6, 212 P.3d 447 and its progeny. The Tribe emphasizes that the dispute arises from its complaint that Oklahoma's *courts* are violating the Compact by asserting jurisdiction over claims which the parties agreed would be restricted to the Tribe's courts. The Tribe acknowledges that although Oklahoma's highest executive officials agree with its position, it is Oklahoma's *judicial* branch which is claimed to be thwarting the parties' mutual intent under

the Compact. The Tribe urges that the Compact's dispute resolution procedures reflect that disputes under the Compact are not consigned to the controlling authority of either party's courts -- particularly when it is claimed that the courts are themselves violating the Compact. The Tribe requests this Arbitrator's independent analysis and judgment as to the validity of each of the three independent grounds it proffers for the result it urges in this case.

### **ANALYSIS**

I concur that the parties' dispute falls within the procedures under Part 12 of the Compact for resolving "any dispute" under the Compact. The Tribe's contentions that Oklahoma is violating the Compact, and that Oklahoma is incorrectly interpreting the Compact, fall specifically within the two examples stated in Part 12 to illustrate circumstances for invoking the dispute resolution procedures.

I now turn to the three independent grounds proffered by the Tribe for the outcome it urges.

#### **I. The Written Agreement Between The Tribe And The Governor.**

The Tribe has attached to its submission a written agreement which the Tribe contends resolves this dispute, executed by their governments' chief executive officials -- the Tribe's Chief and the Governor of Oklahoma (who signed the agreement on January 27, 2010 and February 8, 2010, respectively).

The Agreement is attached hereto as Exhibit C. It provides in relevant part:

1. Before the Compact became effective, Oklahoma state courts lacked jurisdiction over civil actions against the Tribe that arose in Indian Country. Claims under Part 6 of the Compact necessarily arise within the Tribe's Indian Country because the Tribe's gaming facilities are located on lands that qualify as "Indian lands" under the Indian Gaming Regulatory Act. Compact, Part 5(L).
2. Part 9 of the Compact expressly forbids any expansion of State courts' civil jurisdiction: "This Compact shall not alter. . . state civil adjudicatory. . . jurisdiction." Part 6 of the Compact must be construed in accordance with this provision of Part 9. No provision within Part 6 of the Compact waives the Tribe's sovereign immunity or grants the Tribe's consent to be sued in Oklahoma state courts. An Oklahoma state court is not a "court of competent jurisdiction" within the meaning of that term in Part 6(C) of the Compact. The Tribe has not consented to the exercise by the State of jurisdiction over claims arising under Part 6 of the Compact, and the State lacks such jurisdiction.

The Tribe has requested my concurrence that this agreement is a valid resolution of this dispute pursuant to Part 12(1) of the Compact.

I find the Tribe's argument concerning its agreement with the Governor of Oklahoma to be persuasive on the issue of the intent of the parties to the Compact, as I did the March 9, 2009 amicus brief submitted by Governor Henry in support of the Cherokee Nation's Petition For Rehearing in the Cossey case. But I do not find it to be a dispositive alternative ground for ruling in the Tribe's favor.

As the Tribe acknowledges, this case concerns a situation where the executive and judicial branches of the State of Oklahoma are in apparent disagreement. The judicial branch has issued rulings concluding that Oklahoma state courts are courts of competent jurisdiction for tort and prize claims arising from Tribal gaming operations. The executive branch, through the Governor, has

concluded that those claims must be brought in Tribal Court, and not Oklahoma state courts.

Thus I am apparently called upon to rule if the agreement between the Tribe and the executive branch is sufficient, in and of itself, to resolve a dispute with a separate, co-equal branch of government, the judiciary. I decline to do this. There are other grounds to rule on the jurisdictional issue presented in this case, without reaching issues of separations of power.<sup>3</sup>

I also note that the Tribe's reference to the dispute resolution mechanism of Part 12(1) of the Complaint is somewhat curious in the context of the argument the Tribe attempts to make here. The express goal of Part 12(1) is to require the Tribe and the State to meet promptly in order to resolve a dispute, thereby promoting the goal of Part 12 (1) to "resolve all disputes amicably and voluntarily whenever possible."

Thus, the purpose of Part 12(1) of the Compact is to encourage the parties to the Compact to resolve disputes themselves without the necessity of invoking arbitration under Part 12(2) of the Compact. So if the agreement between the Tribe and the Governor's office truly resolved the dispute under Part 12(1) of the Compact, there would be no reason for this dispute to have been referred to me.

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<sup>3</sup> Article IV of the Oklahoma Constitution provides, "The powers of the government of the State of Oklahoma shall be divided into three separate departments: The Legislative, Executive, and Judicial; and except as provided in this Constitution, the Legislative, Executive and Judicial departments of government shall be separate and distinct, and neither shall exercise the powers properly belonging to either of the others."

The reason it has, of course, is that there remains a dispute between the Tribe and the judicial branch of the State of Oklahoma.

## **II. The Tribe's Issue Preclusion Argument.**

The August 25, 2009 Arbitration Decision was issued in an arbitration between Oklahoma and two other tribes, deciding several of the same issues raised here, under the same Compact language, and controlled by the same jurisprudence.

Both federal and Oklahoma jurisprudence recognize offensive nonmutual collateral estoppel (or issue preclusion). The Oklahoma Supreme Court has itself endorsed the use of that doctrine to bind a party to a determination of an issue in a prior arbitration decision. *Cities Service Co. v. Gulf Oil Corp.*, 1999 OK 14, ¶14, 980 P.2d 116, 125.

Application of issue preclusion principles here requires a consideration of several questions to ensure the fairness of binding a party to the prior result, including importantly that the party to be bound to a prior arbitration finding had a full and fair opportunity to litigate the issue and had the same incentive to do so. See *Cities Service*, *supra*, ¶¶15-16; *Restatement (Second) of Judgments* § 84 (1982) and comments c, f, g, and h.<sup>4</sup>

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<sup>4</sup> Cumulatively, the factors identified by the Oklahoma Supreme Court are: (1) whether the defendant had ample incentive to litigate the issue fully in the earlier proceeding; (2) whether the judgment or order for which preclusive effect is sought is itself inconsistent with one or more earlier judgments in the defendant's favor; (3) whether the second action affords the defendant procedural opportunities unavailable in the first that could readily produce a different result; (4) whether the current litigation's legal demands are closely aligned in time and subject matter to those in the earlier proceedings; (5) whether the present

The Tribe argues that Oklahoma had a full and fair opportunity to litigate the overlapping issues involved in the August 25, 2009 arbitration decision, and that it had the same incentive to do so there as in this dispute. The problem is, as is the case with the Tribe's first argument concerning its agreement with the Governor, that there is a difference of opinion between two co-equal branches of the government of the State of Oklahoma, the judicial and the executive. Thus, this case is different than a typical issue preclusion case involving a private litigant which fully litigated in an earlier proceeding.

In the August 25, 2009 arbitration, it is correct that the executive branch of Oklahoma was a participant, and that it largely was in agreement with the positions taken by the Nations. But there were no direct submissions to the Arbitrator by the judicial branch of the State of Oklahoma. The Arbitrator was required to review the relevant decisions of the Oklahoma Supreme Court (including the *Cossey*, *Griffith*, and *Dye* decisions) to understand the position of the judicial branch.

As discussed below, here as well as in the August 25, 2009 arbitration decision, I conclude that the Tribe's positions on the underlying issues at dispute are correct, supported by contract and statutory analysis. But I decline to base this arbitration award on the independent separate ground of issue preclusion.

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litigation was clearly foreseeable to the defendant at the time of the earlier proceedings; (6) whether in the first proceeding the defendant had sufficient opportunity to be heard on the issue; (7) special qualifications of the arbitrator, (8) the arbitrator's scope of authority under the protocol governing the proceeding, and (9) the procedural adequacy of the arbitration proceedings.

To do so could raise constitutional issues concerning the separation of powers in the State of Oklahoma which are not necessary to rule on the dispute. It is well established that judges and arbitrators have wide discretion in whether to apply offensive nonmutual collateral estoppel, and I choose to exercise my discretion against doing so here. See *Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322, 331, 99 S. Ct. 645, 651 (1979); *Collins v. D.R. Horton, Inc.*, 505 F.3d 874, 882 (9th Cir. 2007).

**III. The Grounds Supporting The August 25, 2009 Arbitration Award Apply Equally To This Dispute**

Finally, the Tribe requests that the I review the issues presented here again to ensure that I would still reach the same result in this case that was reached in the August 25, 2009 Arbitration Decision. The parties have not cited, and I am not aware of any authority which would detract from that analysis or result. The parties have not cited, and I can discern no distinguishing fact surrounding the same issues presented herein which would call for a different result. As the Tribe notes, the Compact's terms are the same, the issue is the same, and the federal and Oklahoma jurisprudence is the same.

I therefore adopt and incorporate herein the same legal analysis, findings, and conclusions adopted in the August 25, 2009 Arbitration Decision (attached hereto as Exhibit B). All of the findings and conclusions made with respect to the Choctaw and Chickasaw Nations apply equally in this proceeding to the Eastern Shawnee Tribe of Oklahoma. I set forth the Declaratory Relief granted here, which parallels that of the August 25, 2009 Arbitration Decision.

**DECLARATORY RELIEF GRANTED**

I award to the Eastern Shawnee Tribe of Oklahoma relief in the form of the following Declarations.

1. Preemptive federal law provides that the Class III gaming activities and facilities of the Eastern Shawnee Tribe of Oklahoma are subject to the terms and conditions of that Tribe's Class III gaming Compact.
2. There is no congressional abrogation of the Eastern Shawnee Tribe of Oklahoma's sovereign immunities in the Indian Gaming Regulatory Act (or elsewhere in federal law) that would permit any monetary tort or prize claim to be brought against the Eastern Shawnee Tribe of Oklahoma, or any gaming "arm" thereof, in any Oklahoma state court.
3. Federal law requires that any cognizable tribal waiver of sovereign immunity be unequivocally expressed, not implied.
4. No waiver of the Eastern Shawnee Tribe of Oklahoma's sovereign immunities from any Class III casino-related money damages tort, prize, or other suit in any Oklahoma state court is to be found *outside of* Part 6 of that Tribe's Class III gaming Compact with the State of Oklahoma.
5. The references to tribal (and/or enterprise) sovereign immunity waivers found in Parts 6(A) and 6(B) of the Eastern Shawnee Tribe of Oklahoma's Class III gaming Compact with the State of Oklahoma are not independent or separate waivers that permit the limitations found in Compact Part 6(C) to be ignored, but rather the Part 6(A) and 6(B) waiver references are

textually qualified by Parts 6(A)(2), 6(A)(9), 6(B)(1), and 6(B)(11), which incorporate all of the additional sovereign immunity waiver limitations contained in that Compact's Part 6(C).

6. The tribal (and/or enterprise) sovereign immunity waiver references in Parts 6(A) and 6(B) of the Eastern Shawnee Tribe of Oklahoma's Class III gaming Compact are therefore subject to Part 6(C)'s additional waiver limitations — including Part 6(C)'s "in a court of competent jurisdiction" limitation on the forum(s) in which any tribal (and/or enterprise) sovereign immunity waiver is effective.

7. The phrase "court of competent jurisdiction" in Part 6(C) of the Eastern Shawnee Tribe of Oklahoma's Class III gaming Compact is in and of itself textually ambiguous, and is not defined in that Compact's definitional Part 3.

8. Part 9 of the Eastern Shawnee Tribe of Oklahoma's Class III gaming Compact preserves, adopts, and incorporates by reference into the Compact the controlling law establishing the limits of the Indian-country civil-adjudicatory jurisdiction of both tribal courts and Oklahoma's state courts.

9. Because Part 9 of the Eastern Shawnee Tribe of Oklahoma's Class III gaming Compact with the State of Oklahoma leaves Oklahoma courts' civil-adjudicatory jurisdiction precisely where it was before the Compact (*i.e.*, absent), no Oklahoma state court is a "court of competent jurisdiction" within the meaning of Part 6(C) of the Compact.


10. Because nowhere in the Eastern Shawnee Tribe of Oklahoma's Class III gaming Compact is there any material tribal sovereign immunity waiver

except "in a court of competent jurisdiction," and because Part 9 preserved, adopted, and incorporated by reference the jurisdictional *status quo ante*, there is no express waiver anywhere in the Compact of the Eastern Shawnee Tribe of Oklahoma's sovereign immunity from any relevant Indian country-arising Class III casino-related lawsuit in any Oklahoma state court.

11. Tribal courts (and tribally-designated forums) have civil-adjudicatory jurisdiction over relevant Indian country-arising Class III casino-related lawsuits against Indian tribes (including the Eastern Shawnee Tribe of Oklahoma), and may exercise jurisdiction over such cases to the extent permitted by (and under the conditions established by) that Tribe's sovereign immunity waivers in the Compact.

The foregoing components of the Declaratory Relief ordered herein shall be binding upon all Arbitrating Compacting Parties immediately upon issuance of this Award.

Dated this 5th day of April, 2010.



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Layn R. Phillips, Sole Arbitrator  
ALTERNATIVE DISPUTE RESOLUTION CENTER  
Irell & Manella LLP  
840 Newport Center Drive, Ste. 450  
Newport Beach, CA 92660-67324  
Telephone: (949) 760-5288  
Fax: (949) 760-5289

**CERTIFICATE OF MAILING**

On the 5th day of April, 2010, I mailed copies of this Arbitration Award to counsel for the Arbitrating Compacting Parties herein:

D. Michael McBride III  
Crowe & Dunlevy  
500 Kennedy Building  
321 South Boston Avenue  
Tulsa, OK 74103-3313

Stephen Cortes  
General Counsel  
Office of Governor Brad Henry  
State Capitol Building  
2300 N. Lincoln Boulevard, Room 212  
Oklahoma City, OK 73105

  
Sheryl Knight

# **EXHIBIT 3**

**RESOLUTION OF DISPUTE ARISING UNDER THE STATE-TRIBAL GAMING  
COMPACT BETWEEN THE STATE OF OKLAHOMA AND  
THE EASTERN SHAWNEE TRIBE OF OKLAHOMA**

The State of Oklahoma ("State") and the Eastern Shawnee Tribe of Oklahoma ("Tribe") enter this agreement as a resolution of a dispute arising under a Tribal Gaming Compact as referenced below.

**I. RECITALS**

- A. On November 2, 2004, Oklahoma adopted through referendum the Model Tribal Gaming Compact, 3A O.S. §281, pursuant to 25 U.S.C. §2710, a provision of the Indian Gaming Regulatory Act ("IGRA"). Part 16 of the Compact authorizes a tribe to enter into the Compact without further action by the State. The Tribe did so and the U.S. Department of Interior approved the Compact as published at 70 Fed. Reg. Vol. 70, No. 26 at p. 6903, with an effective date of February 9, 2005.
- B. Part 12 of the Compact provides specific procedures for resolving "all disputes" under the Compact, including but not limited to any contention that one party has failed to comply with the Compact, and including but not limited to any dispute over the "proper interpretation of the terms and conditions of this Compact." If such a dispute does arise, the Compact provides for written notice by the complaining party to the other, and that the "Representatives of the tribe and the state shall meet within thirty (30) days of receipt of notice in an effort to resolve the dispute; ...."
- C. The Tribe contends that the State has failed to comply with Parts 6 and 9 of the Compact, and that a dispute has arisen between the State and the Tribe as to the proper interpretation of Parts 6 and 9 of the Compact. Specifically, the Tribe contends that the State's courts are purporting to exercise jurisdiction over tort claims arising under Part 6(A) of the Compact, notwithstanding that the Compact fails to confer such jurisdiction on Oklahoma courts and in Part 9 expressly disclaims any expansion of the jurisdictional limits of Oklahoma courts.
- D. The Tribe delivered its written notice of the dispute to the State on December 29, 2009. Representatives of the Tribe and the State have met in an effort to resolve the dispute and now do so, as expressly authorized by Part 12(1) of the Compact.



**II. THE PARTIES THEREFORE AGREE AS FOLLOWS:**

1. Before the Compact became effective, Oklahoma state courts lacked jurisdiction over civil actions against the Tribe that arose in Indian Country. Claims under Part 6 of the Compact necessarily arise within the Tribe's Indian Country because the Tribe's gaming facilities are located on lands that qualify as "Indian lands" under the Indian Gaming Regulatory Act. Compact, Part 5(L).
2. Part 9 of the Compact expressly forbids any expansion of State courts' civil jurisdiction: "This Compact shall not alter... state civil adjudicatory... jurisdiction." Part 6 of the Compact must be construed in accordance with this provision of Part 9. No provision within Part 6 of the Compact waives the Tribe's sovereign immunity or grants the Tribe's consent to be sued in Oklahoma state courts. An Oklahoma state court is not a "court of competent jurisdiction" within the meaning of that term in Part 6(C) of the Compact. The Tribe has not consented to the exercise by the State of jurisdiction over claims arising under Part 6 of the Compact, and the State lacks such jurisdiction.
3. The individual signatories to this agreement are the duly authorized representatives of the parties with authority to execute this agreement. Once executed by both parties, this agreement is binding and immediately effective.

Eastern Shawnee Tribe of Oklahoma

Glenna J. Wallace  
Chief Glenna J. Wallace

1-27-10  
Date

State of Oklahoma

Brad Henry  
Governor Brad Henry

2-8-10  
Date

M. Lisa Savage  
Secretary of State



1975251.03



## **EASTERN SHAWNEE TRIBE OF OKLAHOMA**

P.O. Box 350 • Seneca, MO 64865 • (918) 666-2435 • FAX (918) 666-2435

**FILED**

FEB 08 2010

**RESOLUTION NUMBER 012710-R 23**

OKLAHOMA SECRETARY  
OF STATE

**Authorizing the submission of the attached, Resolution of Dispute arising under the State-Tribal Gaming Compact between the State of Oklahoma and the Eastern Shawnee Tribe of Oklahoma.**

**WHEREAS,** the Eastern Shawnee Tribe of Oklahoma is a federally recognized Indian Tribe organized under the Oklahoma Indian Welfare Act of 1936, with a Constitution approved by the Secretary of the Interior, April 4, 1994 and Amended March 2, 1999; and

**WHEREAS,** the Constitution of the Eastern Shawnee Tribe of Oklahoma, Article IX, Section 1, empowers the Business Committee to protect and preserve the Interests of the Tribe; and

**WHEREAS,** the Eastern Shawnee Tribe of Oklahoma is committed to protecting and Preserving the interests of the tribal membership; and

**WHEREAS,** the Eastern Shawnee Tribe of Oklahoma is committed to the concept of Indian Tribes functioning as sovereign governments; and

**NOW THEREFORE BE IT RESOLVED,** that the Business Committee of the Eastern Shawnee Tribe of Oklahoma does hereby wish to authorize the submission of the attached, Resolution of Dispute arising under the State-Tribal Gaming Compact between the State of Oklahoma and the Eastern Shawnee Tribe of Oklahoma.



043922

### CERTIFICATION

The foregoing Resolution NUMBER 012710-R-23 was adopted at a duly called [regular or special] meeting of the Business Committee of the Eastern Shawnee Tribe of Oklahoma conducted on January 27, 2010. A quorum was present at said meeting with the vote reflecting,

5 FOR  
0 AGAINST  
0 ABSTAINING  
0 ABSENT

Motion passed

  
Shawna Pickup,  
Secretary

1-27-10  
Date Signed

Chris Samples  
Chris Samples,  
Treasurer

1-27-10  
Date Signed

### EXECUTIVE BRANCH

Vetoed: YES

NO

✓

Date: 1-27-10 Time: 7:40 p.m.

  
Glenna J. Wallace,  
Chief



# **EXHIBIT 4**



D. Michael McBride III  
Direct Tel: (918) 592-9824  
Direct Fax: (918) 599-6317

mike.mcbride@crowedunlevy.com

December 29, 2009

**"NOTICE OF DISPUTE"  
UNDER TRIBAL STATE GAMING COMPACT  
WITH EASTERN SHAWNEE TRIBE OF OKLAHOMA**

**VIA FACSIMILE: (405) 521-3353  
AND VIA CERTIFIED U.S. MAIL - RETURN RECEIPT REQUESTED**

Honorable Governor Brad Henry  
State Capitol Building  
2300 N. Lincoln Blvd., Room 212  
Oklahoma City, OK 73105

Dear Governor Henry:

Please take notice that the Eastern Shawnee Tribe of Oklahoma ("Tribe") invokes the Dispute Resolution provisions of the Tribal State Gaming Compact, Senate Bill 1252 codified at 3A Okla. Stat. §§ 280, 281 et seq. ("Compact"). The United States Department of Interior, Office of the Secretary approved the Compact on January 6, 2006 pursuant to the Indian Gaming Regulatory Act, 25 United States Code § 2710(d)(8)(C). The United States published approval of the Compact at 70 FED. REG. 6903 (Feb. 9, 2005). The Tribe invokes the Dispute Resolution process pursuant to Part 12 of the Compact.

Several tort claimants have sued the Tribe in Ottawa County, State of Oklahoma courts without the Tribe's consent and without an appropriate waiver of sovereign immunity. The latest dispute involves *Crocker v. Eastern Shawnee Tribe, Bordertown Casino and Bingo*, Case No. CJ-09-485 (Ottawa Co., OK). The Tribe has made a special entry of appearance and seeks to dismiss the case. The matter is pending. Assertion of state court jurisdiction violates the

OKLAHOMA CITY  
20 NORTH BROADWAY, SUITE 1800  
OKLAHOMA CITY, OK 73102-8273  
TEL: 405.235.7700 • FAX: 405.239.6651

TULSA  
500 KENNEDY BUILDING  
321 SOUTH BOSTON AVENUE  
TULSA, OK 74103-3913  
TEL: 918.592.9800 • FAX: 918.592.9801

NORMAN  
THE HPOINT OFFICE BUILDING  
2500 SOUTH MCGEE, SUITE 140  
NORMAN, OK 73072-8705  
TEL: 405.321.7317 • FAX: 405.360.4002

Honorable Governor Brad Henry  
December 29, 2009  
Page 2 of 4

Compact and violates federal and tribal laws. The State of Oklahoma, through its judiciary, has previously interpreted the Compact to permit the exercise of jurisdiction contrary to a different tribe's assertion of sovereign immunity, in *Cossey v. Cherokee nation Enterprises, LLC*, 2009 OK 6, in *Griffith v. Choctaw Casino of Pocola*, 2009 OK 51, and in *Dye v. Choctaw Casino of Pocola*, 2009 OK 52 (all of which are in any event factually distinguishable from the Tribe's operation of governmental gaming). The Tribe disputes this interpretation of the terms and conditions of the Compact by the State of Oklahoma. Further, the Tribe contends that the State of Oklahoma is collaterally estopped from adhering to such interpretation by an arbitration decision on the same issue, dated August 25, 2009, by the Honorable Layn R. Phillips as arbitrator.<sup>1</sup> The Arbitration Decision was rendered subsequent to *Cossey*, *Griffith*, and *Dye*.

The Tribe maintains that the Arbitration Decision collaterally binds the State of Oklahoma as the terms of the Compact applicable to the Tribe are exactly the same as they are for the Choctaw and Chickasaw Nations. In the event that you agree with the Tribe's interpretation, of course, we can submit to an agreed arbitration order on the matter which can be relied upon by the Tribe to preclude Oklahoma courts from improperly exercising jurisdiction over disputes illustrated by the Crocker case referenced above. We look forward to hearing from you soon.

Aside from the fact that the State of Oklahoma is collaterally estopped by the Arbitration Decision as to the issue, the Tribe's position as to its sovereign immunity in such disputes is correct. The courts of Oklahoma are not "court[s] of competent jurisdiction" as provided in the Compact at Part 6(a) and 6(b). Those portions of the Compact contain the limited tribal sovereign immunity waivers with respect to tort and prize claims.<sup>2</sup> The Tribe maintains that it has not waived

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<sup>1</sup> "Class Three Gaming Compact Jurisdiction-Related Disputes Jointly Referred to Binding Arbitration by the Choctaw Nation of Oklahoma, the Chickasaw Nation and the State of Oklahoma – In the Matter of the Joint Referral to Binding Arbitration by the Choctaw Nation of Oklahoma, the Chickasaw Nation and the State of Oklahoma of Disputes Under and/or Arising from the Choctaw Nation of Oklahoma and State of Oklahoma Gaming Compact and the Chickasaw Nation and the State of Oklahoma Gaming Compact, dated August 25, 2009 rendered by Honorable Layn R. Phillips, sole arbitrator." ("Arbitration Decision").

<sup>2</sup> The Compact at Part 6(C) provides:

The Tribe consents to suit against the enterprise in a court of competent jurisdiction with respect to a tort claim or a prize claim if all requirements of

Honorable Governor Brad Henry  
December 29, 2009  
Page 3 of 4

immunity to resolve such disputes in state courts and that no Oklahoma state court could possibly be within the category of "a court of competent jurisdiction" for Compact Part 6(C) purposes.

Part 9 provides in material part: "This Compact shall not alter tribal . . . or state civil adjudicatory . . . jurisdiction." Compact at Part 9. Oklahoma state courts have lacked Indian Country civil-adjudicatory jurisdiction over suits against tribes since statehood to the present time. Federal law preempted state jurisdiction because Oklahoma courts lacked jurisdiction before statehood, during statehood and up to the present time it follows that state courts lack jurisdiction over such matters after the Compact went into effect as well. Oklahoma courts lack material civil-adjudicatory jurisdiction as a matter of preemptive federal law. Therefore, no Oklahoma court is "a court of competent jurisdiction" for the purposes of any Compact Part 6 tribal sovereign-immunity waiver.

The Tribe offers its own internal dispute resolution procedures pursuant to established tort claim regulations. Oklahoma courts have no role to play.

This dispute of interpretation is material and the Tribe has standing as the Oklahoma Supreme Court affirmed in *Cossey, supra*, 2009 OK 6, 212 P3d 447.

The continued assertion of civil adjudicatory jurisdiction over tort or prize claim issues infringes upon the sovereignty of the Tribe. Accordingly, the Tribe respectfully demands a meeting to voluntarily and amicably resolve these disputes within 30 days of receipt of notice of this letter. Failing the resolution of these issues through personal meeting, let this letter serve as a notice of demand of arbitration under the Compact.

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Paragraph 9 of Subsection A or all requirements of Paragraph 11 of Subsection B of this part have been met; provided that such consent shall be subject to the following additional conditions and limitations: . . .

Honorable Governor Brad Henry  
December 29, 2009  
Page 4 of 4

Sincerely yours,



D. Michael McBride III  
Counsel to the Eastern Shawnee  
Tribe of Oklahoma

DMM/pg

cc: Chief Glenna J. Wallace, Eastern Shawnee Tribe of Oklahoma  
Business Committee, Eastern Shawnee Tribe of Oklahoma  
Brett Barnes, Gaming Commissioner, Eastern Shawnee Tribe of Oklahoma  
Mario Hernandez, Governmental Gaming Manager  
Scott Meacham, Treasurer of the State of Oklahoma  
Steve Cortez, General Counsel to Governor Henry

1967516.02

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>A. Signature  <i>* Jonda Fisher</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to:                  Hon. Brad Henry                  State Capitol Bldg.                  2300 N. Lincoln Blvd.                  Room 212                  OKC, OK 73105</p>		<p>B. Received by (Printed Name)  <i>Jonda Fisher</i></p> <p>C. Date of Delivery  <i>12-31-07</i></p>	
		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes                  If YES, enter delivery address below: <input type="checkbox"/> No</p>	
		<p>3. Service Type  <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>2. Article Number                  (Transfer from service label)</p>		<p>7008 3230 0000 2930 8270</p>	
<p>PS Form 3811, February 2004</p>		<p>Domestic Return Receipt 102595-02-M-1540</p>	

UNITED STATES POSTAL SERVICE

31 DEC 2007 PM 5

First-Class Mail  
 Postage  
 USPS  
 Receipt No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

ATTN: DMM  
 CROWE & DUNLEVY  
 500 Kennedy Building  
 321 South Boston  
 Tulsa, OK 74103

# **EXHIBIT 5**

**JOINT REFERRAL TO BINDING ARBITRATION OF DISPUTES UNDER  
AND/OR ARISING FROM THE EASTERN SHAWNEE TRIBE OF OKLAHOMA  
AND STATE OF OKLAHOMA GAMING COMPACT**

February 10, 2010

OKLAHOMA CITY, OKLAHOMA

HON. GLENNA J. WALLACE  
CHIEF, EASTERN SHAWNEE TRIBE OF OKLAHOMA

D. Michael McBride III, OBA #15431  
Harvey D. Ellis, Jr. OBA # 2694  
CROWE & DUNLEVY  
321 S. Boston  
500 Kennedy Building  
Tulsa, OK 74103-3313  
(918) 592-9824  
(918) 599-6317 (fax)

HON. BRAD HENRY  
GOVERNOR, STATE OF OKLAHOMA

Stephen Cortes, OBA # 18359  
GENERAL COUNSEL  
OFFICE OF THE GOVERNOR  
State Capitol Building  
2300 N. Lincoln Boulevard  
Suite 212  
Oklahoma City, OK 73105  
(405) 521-2342

The Eastern Shawnee Tribe of Oklahoma and the State of Oklahoma [hereinafter collectively, "the Arbitrating Compacting Parties"], agree to this joint referral to binding arbitration, as provided herein. The Arbitrating Compacting Parties submit to binding arbitral interpretation in light of controlling extrinsic law the issue of whether, under the Eastern Shawnee Tribe of Oklahoma and State of Oklahoma Gaming Compact ["the Compact"], jurisdiction over all compact-based tort claim and/or prize claim lawsuits lies exclusively in Eastern Shawnee Tribe of Oklahoma forums. The Arbitrating Compacting Parties further agree that the Arbitrator may resolve such ancillary factual and/or legal issues as the Arbitrator deems necessary to the resolution of this dispute. As provided herein, the Arbitrating Compacting Parties also agree to the appointment of a named Arbitrator, the procedures for arbitration, and the place of and time for arbitration. The Arbitrating Compacting Parties agree to arbitration outside of AAA requirements, rules, and administration, and agree to the entry of judgment on, and/or the review of the resulting Arbitration Award in the United States District Court for the Western District of Oklahoma under the terms and conditions established by Parts 12(2) and 12(3) of those Compacts.<sup>1</sup> The Arbitrating Compacting Parties further agree that the ultimately resulting federal court judgment, subject only to Part 12(2) and (3)-provided review, shall be binding on all courts, and that the ultimately resulting federal court judgment deriving therefrom may be enforced (but may not be re-reviewed) by any other court.

Pursuant to Part 12(1) and/or Parts 12(2) and (3) of the Compacts, the Arbitrating Compacting Parties have agreed to dispense with any AAA role in Arbitrator appointment, the AAA Rules, and AAA administration of this Arbitration.<sup>2</sup>

The Arbitrating Compacting Parties hereby appoint the Hon. Layn R. Phillips, formerly Judge of the United States District Court for the Western District

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<sup>1</sup> The Eastern Shawnee Tribe of Oklahoma provided a Compact Part 12(1) Notice of Dispute over Interpretations of its Compact to the State of Oklahoma, as required by Compact Part 14, on December 29, 2009. The Arbitrating Compacting Parties have been engaged in informal dispute-resolution discussions since then pursuant to Part 12(1) of their Compacts. This Joint Referral is agreed to by the Arbitrating Compacting Parties under Compact Part 12(1) and/or Compact Parts 12(2) and (3).

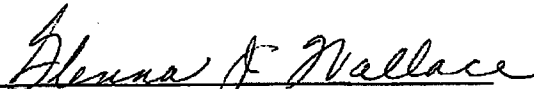
<sup>2</sup> Without deciding that any particular set of AAA rules might have otherwise applied, the Arbitrating Compacting Parties note that Rule R-1(a) of the AAA Commercial Arbitration Rules provides that "[t]he parties, by written agreement, may vary the procedures set forth in these rules."

of Oklahoma, as the sole Arbitrator. The Compacting Parties agree that Judge Phillips is exceptionally well qualified<sup>3</sup> to arbitrate this matter.

The procedures for this Arbitration shall be those mutually agreeable to the named Arbitrator and to all Arbitrating Compacting Parties. In the event of any disagreement, the procedures prescribed by the Arbitrator shall be final as to any area(s) of disagreement.

The Arbitrating Compacting Parties express their shared desire that this arbitration proceed as expeditiously as the Arbitrator deems appropriate in light of the importance of the issues subject to arbitration.

The place of this arbitration shall be deemed to be Oklahoma City, Oklahoma, and within the jurisdiction of the United States District Court for the Western District of Oklahoma, and in no other place, whether or not the representatives of the Arbitrating Compacting Parties physically signed this arbitration agreement in that location, and whether or not the Arbitrator deems it appropriate to perform research, conduct arbitration-related business, and/or transmit the Arbitration Award to the Arbitrating Compacting Parties from any other place.



Hon. Glenna J. Wallace  
CHIEF, EASTERN SHAWNEE TRIBE OF  
OKLAHOMA

HON. GLENNA J. WALLACE  
CHIEF, EASTERN SHAWNEE TRIBE OF OKLAHOMA

D. Michael McBride III, OBA #15431  
CROWE & DUNLEVY  
321 S. Boston  
500 Kennedy Building  
Tulsa, OK 74103-3313  
(918) 592-9824  
(918) 599-6317 (fax)



Hon. Brad Henry  
GOVERNOR, STATE OF OKLAHOMA

HON. BRAD HENRY  
GOVERNOR, STATE OF OKLAHOMA

Stephen Cortes, OBA # 18359  
~~DEPUTY~~ GENERAL COUNSEL  
OFFICE OF THE GOVERNOR  
State Capitol Building  
2300 N. Lincoln Boulevard  
Suite 212  
Oklahoma City, OK 73105  
(405) 521-2342

<sup>3</sup> Judge Phillips has also sat by designation on panels of the United States Court of Appeals for the Tenth Circuit. Judge Phillips is now in full-time legal practice (specializing in arbitration and mediation) with the firm of Irell & Manella, LLP. Judge Phillips founded, and now heads, that firm's ADR Center in Newport Beach, California.

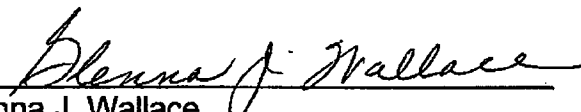
County of Ottawa                     )  
  )  
State of Oklahoma                 )       ss

**AFFIDAVIT OF GLENNA J. WALLACE**

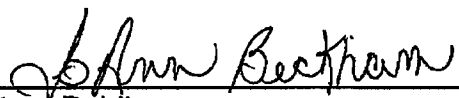
COMES now affiant, Glenna J. Wallace, of lawful age and duly sworn under oath, and states the following:

1. My name is Glenna J. Wallace, and my business address is 127 W. Oneida, Seneca, Missouri 64865.
2. I am the Chief of the Eastern Shawnee Tribe of Oklahoma.
3. The document captioned "Joint Referral to Binding Arbitration of Disputes Under and/or Arising From the Eastern Shawnee Tribe of Oklahoma and State of Oklahoma Gaming Compact" is a true, correct, and authentic copy of the Arbitration Agreement personally signed by me in my capacity as Chief of the Eastern Shawnee Tribe of Oklahoma on February 11<sup>th</sup>, 2010.

FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
Glenna J. Wallace

Subscribed and sworn to before me this 11<sup>th</sup> day of February, 2010.

  
\_\_\_\_\_  
Notary Public

My commission expires:

June 17, 2012  
Commission NO. 04005430

1980491.01



County of Oklahoma     )  
                                      )  
State of Oklahoma     )     ss

**AFFIDAVIT OF STEPHEN LOUIS CORTÉS**

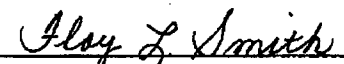
COMES now affiant, Stephen Louis Cortés, of lawful age and duly sworn under oath, and states the following:

1. My name is Stephen Louis Cortés, and my business address is 2300 N. Lincoln Boulevard, Room 212, Oklahoma City, Oklahoma 73105.
2. I am the General Counsel for Governor Brad Henry, Governor of the State of Oklahoma and have served in that capacity since January 2010.
3. The document captioned "Joint Referral to Binding Arbitration of Disputes Under and/or Arising From the Eastern Shawnee Tribe of Oklahoma and State of Oklahoma Gaming Compact" is a true, correct, and authentic copy of the Arbitration Agreement signed by Governor Brad Henry in his capacity as Governor of the State of Oklahoma on February 15<sup>th</sup>, 2010.

FURTHER AFFIANT SAYETH NOT.

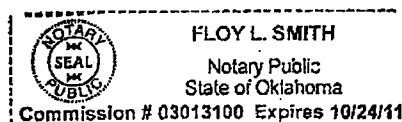
  
\_\_\_\_\_  
Stephen Louis Cortés

Subscribed and sworn to before me this 15<sup>th</sup> day of February, 2010.

  
\_\_\_\_\_  
Notary Public

My commission expires:

10/24/11



# **EXHIBIT 6**

**CLASS III GAMING COMPACT JURISDICTION-RELATED DISPUTES  
JOINTLY REFERRED TO BINDING ARBITRATION BY THE  
CHOCTAW NATION OF OKLAHOMA, THE CHICKASAW NATION,  
AND THE STATE OF OKLAHOMA**

*In the Matter of the Joint Referral to Binding Arbitration by the Choctaw Nation of  
Oklahoma, the Chickasaw Nation, and the State of Oklahoma of Disputes Under  
and/or Arising From the Choctaw Nation of Oklahoma and State of Oklahoma  
Gaming Compact and the Chickasaw Nation and State of Oklahoma Gaming  
Compact*

August 25, 2009

Oklahoma City, Oklahoma

**ARBITRATION AWARD**

Hon. Layn R. Phillips, Sole Arbitrator  
Alternative Dispute Resolution Center  
Irell & Manella LLP  
840 Newport Center Drive, Suite 450  
Newport Beach, CA 92660-6324  
Telephone: (949) 760-5288  
Fax: (949) 760-5289

I.

**INTRODUCTION**

This Arbitration Award ("Award") is the final and binding Award resolving disputes jointly referred to me on July 20, 2009, as sole arbitrator, by the Choctaw Nation of Oklahoma ("Choctaw Nation"), the Chickasaw Nation (jointly, "the Nations" or "the Arbitrating Nations"), and the State of Oklahoma (collectively, "the Arbitrating Compacting Parties"). See Joint Referral, APPENDIX I. The disputes are over the proper interpretation of the terms and conditions of the Choctaw Nation of Oklahoma and State of Oklahoma Gaming Compact and the Chickasaw Nation and State of Oklahoma Gaming Compact (jointly, "Compacts" or "Class III Compacts"), as construed in light of controlling extrinsic law.

In particular, the Arbitrating Compacting Parties have asked me to interpret the Compacts, "in light of controlling extrinsic law" on "the issue of whether under the Choctaw Nation of Oklahoma and State of Oklahoma Gaming Compact and the Chickasaw Nation and State of Oklahoma Gaming Compact . . . jurisdiction over all Compact-based tort claim and/or prize claim lawsuits lies exclusively in Choctaw Nation or Chickasaw Nation forums." The Arbitrating Compacting Parties have also agreed, "that the Arbitrator may resolve such ancillary factual and/or legal issues as the Arbitrator deems necessary to the resolution of this dispute." See Joint Referral, APP. 1 at 1 (first ¶).

These disputes were proximately generated by three 2009 Oklahoma Supreme Court decisions (discussed below), in which five Justices of that Court concluded, over invocations of tribal sovereign immunity, that Oklahoma state courts have the power to adjudicate certain tribal Class III casino-arising patron claims against Class III Compacting Indian tribes. Thus,

the issue I am called upon to resolve pursuant to Part 12 of the Compacts is whether or not an Oklahoma state court and/or an Arbitrating Nations' tribal court is properly interpreted to be a "court of competent jurisdiction" within the Arbitrating Nations' limited consent to suit for tort claims and prize claims as set forth in Part 6(C) of the Compacts.

## II.

### **FACTUAL AND PROCEDURAL BACKGROUND**

#### **A. Class III Gaming On Tribal Lands In Oklahoma And Past Oklahoma State Court Litigation.**

The federal Indian Gaming Regulatory Act<sup>1</sup> ("IGRA") provides that Indian tribes may conduct "Class III gaming"<sup>2</sup> on "Indian lands"<sup>3</sup> within their "Indian country"<sup>4</sup> if conducted in conformity with a tribal/state Compact.<sup>5</sup> Shortly after Oklahoma Governor Brad Henry first assumed office in 2003, tribal and state representatives began new discussions about the potential benefits of compacted tribal Class III gaming within Oklahoma. Current State Treasurer Scott Meacham served as Director of the Office of State Finance during 2003 and 2004, and at Governor Henry's direction now-Treasurer Meacham served as the State's lead Class III gaming Compact negotiator. On May 19, 2004, Governor Henry signed Senate Bill 1252, the final version (as agreed to by the state and tribal negotiators) of what would become

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<sup>1</sup> Pub. L. No. 100-497, 102 Stat. 2467 (1988) (codified as amended at 18 U.S.C. §§ 1166 to 1168 and 25 U.S.C. § 2701 *et seq.*).

<sup>2</sup> See 25 U.S.C. § 2703(8) (defining "class III gaming").

<sup>3</sup> See 25 U.S.C. § 2703(4) (defining "Indian lands" for IGRA purposes).

<sup>4</sup> See 18 U.S.C. § 1151 (defining "Indian country").

<sup>5</sup> See 25 U.S.C. § 2710(d)(1)(C).

Oklahoma's Model Class III gaming Compact.<sup>6</sup> The proposed Model Compact and its companion legislation were approved as State Question No. 712 in a statewide referendum on November 2, 2004, and the State's Model Class III Compact offer to Oklahoma's tribes took the form of a state statute.<sup>7</sup>

The Choctaw and Chickasaw Nations both accepted the State's Model Compact offer, and those Nations' Compacts became effective, respectively, on February 9 and February 8, 2005 (the dates of their publication in the Federal Register).<sup>8</sup> Those Compacts have been in continuous force since then, and pursuant to IGRA, Class III gaming activities by the Choctaw and Chickasaw Nation on their tribal lands and within their Indian country are now "fully subject to the terms and conditions of [their] Compact[s]. . . ."<sup>9</sup>

Part 12 of those Compacts contains their dispute-resolution procedures. The first sentence of Part 12 authorizes any Compacting Party to unilaterally invoke the Part 12 procedures that follow if the invoking Compacting Party in good faith<sup>10</sup> believes that the opposite Compacting Party "has failed to comply" with any Compact requirement, "or in the event of any dispute hereunder, including, but not limited to, a dispute over the proper interpretation of the terms and conditions of [the] Compact."<sup>11</sup>

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<sup>6</sup> See Brief of Amici Curiae Brad Henry, Governor of the State of Oklahoma, and Scott Meacham, Treasurer of the State of Oklahoma, in Support of Defendants'/Petitioners' Petition for Rehearing, at 1-6 (and attached affidavits of Governor Henry and Treasurer Meacham), *Cossey v. Cherokee Nation Enterprises, LLC*, No. 105,300 (Okla. Sup. Ct., filed Mar. 9, 2009).

<sup>7</sup> See OKLA. STAT. tit. 3A, §§ 280, 281.

<sup>8</sup> See 25 U.S.C. § 2710(d)(3)(B); see also Compact pt. 16.

<sup>9</sup> See 25 U.S.C. § 2710(d)(2)(C); see also *id.* § 2710(d)(3)(B).

<sup>10</sup> See Compact pt. 12(2).

<sup>11</sup> See Compact pt. 12.

Parts 6(A) and 6(B) of the Nations' Compacts impose on the Nations' gaming "enterprises" (in both substance and form, on the Nations themselves<sup>12</sup>) the obligation to provide a due process forum for casino patrons wishing to pursue covered tort or prize claims.

Parts 6(A) and 6(B) contain limited tribal sovereign-immunity waivers with respect to such claims, but in addition to containing their own limitations on the waivers, Parts 6(A) and 6(B) also incorporate the additional sovereign-immunity-waiver limitations of Compact Part 6(C). Part 6(C) begins:

The tribe consents to suit against the enterprise *in a court of competent jurisdiction* with respect to a tort claim or a prize claim if all requirements of paragraph 9 of subsection A or all requirements of paragraph 11 of subsection B of this part have been met; provided that such consent shall be subject to the following *additional* conditions and limitations: . . .<sup>13</sup>

In their Arbitration Statement, the Choctaw and Chickasaw Nations urge that because of Compact Part 9, no Oklahoma state court could possibly be within the category of "a court of competent jurisdiction" for Compact Part 6(C) purposes. Part 9 provides in material part: "This Compact shall not alter tribal . . . or state civil adjudicatory . . . jurisdiction."<sup>14</sup>

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<sup>12</sup> With one exception irrelevant herein, Compact Part 3(13) defines "enterprise" as "the tribe or the tribal agency or section . . . with direct responsibility for the conduct of covered games . . ." Compact Part 3(13) continues: "In any event, the tribe shall have the ultimate responsibility for ensuring that the tribe or enterprise fulfills the responsibilities under this Compact.").

<sup>13</sup> Compact pt. 6(C) (emphasis added).

<sup>14</sup> Compact pt. 9.

The Arbitrating Nations maintain that Oklahoma state courts' Indian-country civil-adjudicatory jurisdiction over monetary suits against tribes was federally preempted from the time of Oklahoma statehood to the present date, and that because Oklahoma's courts lacked such jurisdiction *before* the Compact, given Part 9 they lacked it *after* the Compact as well. Because Oklahoma courts lacked material civil-adjudicatory jurisdiction as a matter of preemptive federal law, the Nations reason, no Oklahoma court is "a court of competent jurisdiction" for purposes of any Compact Part 6 tribal sovereign-immunity waiver. In further consequence, they conclude, the only Compact sovereign-immunity waiver is applicable only in the Nations' own designated forums, not in any Oklahoma state court.

The first two-and-a-half years' experience under Oklahoma's Class III gaming Compacts suggested that both tribal courts and Oklahoma's state courts viewed things exactly the same way. Tribal courts (sometimes preceded by tribal administrative adjudications) began to adjudicate patron claims shortly after the first Class III Compacts' 2005 entry-into-force, and when patrons sought to bring Class III casino-related claims in state district courts, the state courts dismissed them on civil-adjudicatory jurisdiction/tribal sovereign-immunity grounds.<sup>15</sup> In the one state district court decision that had "gone the other way" (without opinion) as of the summer of 2007,<sup>16</sup> the Oklahoma

<sup>15</sup> See, e.g., *Patrick v. Cherokee Nation Enterprises, Inc.*, No. CJ-2006-180 (D. Ct. Rogers County, Okla., May 17, 2006); *Loggings v. Cherokee Nation Enterprises, LLC*, No. CJ-2006-203 (D. Ct. Rogers County, Okla., May 25, 2006); *Dye v. Choctaw Casino of Pocola*, No. CJ-2007-207 (D. Ct. LeFlore County, Okla., May 10, 2007); *Griffith v. Choctaw Casino of Pocola*, No. CJ-2006-85 (D. Ct. LeFlore County, Okla., June 21, 2007).

<sup>16</sup> See *Manwarring v. Muscogee (Creek) Nation Gaming Comm'n*, No. CJ-2007-745 (D. Ct. Tulsa County, Okla., Apr. 16, 2007) (Order denying Motion to Quash and Dismiss).

Supreme Court, on a 6-to-3 vote, had in *Muscogee (Creek) Nation Gaming Commission v. Fitzgerald* assumed original jurisdiction and issued the following July 2, 2007 Writ of Prohibition:

A writ is hereby issued prohibiting the respondent district judge from proceeding further in *Manwarring v. Muscogee (Creek) Nation Gaming Commission, et al.*, Tulsa County District Court Case No. CJ-2007-745. *The Muscogee (Creek) Nation District Court has exclusive jurisdiction over plaintiff's claim.*<sup>17</sup>

Twenty-five months ago, the matter seemed well-settled — in favor of the exclusivity of tribal-forum jurisdiction over all Class III casino-related patron claims, and the absence of any tribal sovereign-immunity waiver effective in Oklahoma's state courts.

But the state-court plaintiffs in two LeFlore County cases<sup>18</sup> had appealed the state district court's dismissals, and despite the Oklahoma Supreme Court's July 2, 2007 *Fitzgerald* Writ of Prohibition,<sup>19</sup> a panel of the Oklahoma Court of Civil Appeals reversed one of the LeFlore County dismissals in October 2007 (based on reasoning that the Oklahoma Supreme Court has now unanimously rejected<sup>20</sup>). And in late 2007, a different Rogers County District Court Judge than the one who had dismissed two similar cases in 2006 decided to exercise civil-adjudicatory jurisdiction over a Class III-casino patron tort claim against

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<sup>17</sup> See *Muscogee (Creek) Nation Gaming Comm'n v. Fitzgerald*, No. 104,726 (Okla. Sup. Ct., July 2, 2007) (Writ of Prohibition) (emphasis added).

<sup>18</sup> See *supra* at 5 & note 15.

<sup>19</sup> See *supra* at 5-6 & note 17.

<sup>20</sup> See *Dye v. Choctaw Casino of Pocola*, 2009 OK 52 (all opinions).

the Cherokee Nation.<sup>21</sup> That District Court Judge certified the Compact jurisdictional/sovereign immunity question to the Oklahoma Supreme Court, and the latter granted certiorari.

The net result was that *Cossey v. Cherokee Nation Enterprises, LLC*,<sup>22</sup> bypassed the Court of Civil Appeals and "leapfrogged" the two Choctaw Nation cases<sup>23</sup> that had been the "leading" (at least post-*Fitzgerald*) state-court appeals of Class III casino-claim dismissals.

On January 20, 2009, in five separate opinions supporting four different outcomes, five Justices of the Oklahoma Supreme Court decided in *Cossey v. Cherokee Nation Enterprises, LLC*,<sup>24</sup> that Oklahoma state courts had either exclusive jurisdiction (four Justices)<sup>25</sup> or jurisdiction concurrent with tribal courts (one Justice)<sup>26</sup> to adjudicate Class III-casino patron claims.

The *Cossey* Court issued no Mandate on January 20, 2009, presumably because of the availability to the Cherokee Nation of a possible Petition for Rehearing. Asserting that the *Cossey* opinions (even if not Mandated) had ripened a Compact Part 12-cognizable "dispute over the proper interpretation of the terms and conditions of [the] Compact," and maintaining its standing objection to state courts' power to render any binding Compact interpretations,

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<sup>21</sup> Because there is no legal difference between any of the Indian Nations in question and their gaming "arms," any "arm(s)" will be referred to hereinafter as the respective Nation.

<sup>22</sup> No. 105,300 (Okla. Sup. Ct., pet. for cert. granted Jan. 7, 2008).

<sup>23</sup> *Dye v. Choctaw Casino of Pocola*, No. 104,737 (Okla. Sup. Ct., pet. for cert. granted Mar. 3, 2008); *Griffith v. Choctaw Casino of Pocola*, No. 104,887 (Okla. Sup. Ct., reassigned to Okla. Sup. Ct. docket Mar. 25, 2008).

<sup>24</sup> 2009 OK 6.

<sup>25</sup> See *id.* (Opinion of WATT, TAYLOR, OPALA, and WINCHESTER, JJ.).

<sup>26</sup> See *id.* (Opinion of COLBERT, J.).

the Choctaw Nation "triggered" Compact Part 12's dispute-resolution procedures on February 4, 2009 through the Compact-prescribed method for providing a Notice of Dispute to the State.

Also on February 4, 2009, the Choctaw Nation moved to stay state-court proceedings pending Compact Part 12 dispute resolution procedures in *Dye v. Choctaw Casino of Pocola* and *Griffith v. Choctaw Casino of Pocola*,<sup>27</sup> its two (now-trailing) state-court appellate cases. On March 3, 2009, without comment, the Oklahoma Supreme Court denied the Choctaw Nation's two Motions to Stay. On March 6, 2009 — three days after the Oklahoma Supreme Court refused to stay *Dye* and *Griffith* in deference to invoked Compact Part 12 dispute-resolution procedures — the Chickasaw Nation (a nonparty to any state-court Compact-related litigation), also concerned about the possibly imminent reversal by the Oklahoma Supreme Court of its *Fitzgerald* approach in *Cossey*, *Dye*, and/or *Griffith*, independently invoked Compact Part 12 by delivering its own Notice of Dispute to the State. Informal discussions ensued between representatives of the Choctaw Nation, the Chickasaw Nation, and the State of Oklahoma.

On March 9, 2009, the Governor of the State of Oklahoma, Brad Henry, and the Treasurer of the State of Oklahoma, Scott Meacham, filed an amicus brief in *Cossey* supporting the Cherokee Nation's Petition For Rehearing. In support of their amicus brief, Governor Henry and Treasurer Meacham submitted affidavits stating that when they were involved in negotiating the Model Tribal Gaming Compact with Oklahoma Indian tribes, they did not

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<sup>27</sup> See Mot. to Stay Proceedings Pending Compact Part 12 Dispute-Resolution Procedures, *Dye v. Choctaw Casino of Pocola*, No. 104,737 (Okla. Sup. Ct., filed Feb. 4, 2009); Mot. to Stay Proceedings Pending Compact Part 12 Dispute-Resolution Procedures, *Griffith v. Choctaw Casino of Pocola*, No. 104,887 (Okla. Sup. Ct., filed Feb. 4, 2009).

intend or understand the phrase "a court of competent jurisdiction" as used in Part 6(C) of the Compacts to include Oklahoma state courts.<sup>28</sup>

On June 11, 2009, without comment, the Oklahoma Supreme Court denied the Cherokee Nation's Petition for Rehearing in *Cossey*, thereby allowing its cluster of five *Cossey* opinions to stand for what they had cumulatively held; the same day, that Court also issued the Mandate directing the state district court to proceed.

On June 30, 2009, the Oklahoma Supreme Court issued five opinions in *Griffith v. Choctaw Casino of Pocola*,<sup>29</sup> and three in *Dye v. Choctaw Casino of Pocola*.<sup>30</sup> (*Dye* contained no independent reasoning of its own, but relied on *Griffith's* reasoning/authority to support its conclusions.)

In *Griffith* and *Dye* (unlike in *Cossey*), the Oklahoma Supreme Court assembled five-Justice majorities, and in the *Griffith* and *Dye* per curiam opinions that Court concluded that under the Compact, Oklahoma state courts had the power to adjudicate Class III-casino patrons' claims against the Choctaw Nation concurrently with tribal *and* federal courts. The *Griffith* and *Dye* per curiam opinions abandoned the *Cossey* plurality's theories<sup>31</sup> that a material tribal sovereign-immunity waiver could be found anywhere other than in the Class III Compacts.<sup>32</sup>

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<sup>28</sup> See, e.g., Brief of Amici Curiae Brad Henry, Governor of Oklahoma, and Scott Meacham, Treasurer of the State of Oklahoma, in Support of Defendants'/Petitioners' Petition for Rehearing, *Cossey* (Mar. 9, 2009), *passim* (and affidavits attached thereto).

<sup>29</sup> 2009 OK 51.

<sup>30</sup> 2009 OK 52.

<sup>31</sup> See, e.g., *Cossey* (Opinion of WATT, J.) ¶¶ 6, 21-38.

<sup>32</sup> See *Griffith*, 2009 OK 51 (per curiam opinion) *passim*; *Dye*, 2009 OK 52 (per curiam opinion) *passim*.

The Choctaw Nation timely petitioned for rehearing in *Griffith and Dye* on July 20, 2009. Also on July 20, the Choctaw Nation, the Chickasaw Nation, and the State of Oklahoma executed a Joint Referral to Binding Arbitration pursuant to Part 12(1), and/or Parts 12(2) and (3), of the Nations' respective Class III gaming Compact(s) with the State.<sup>33</sup> Citing Sections 2 and 3 of the Federal Arbitration Act ("FAA"),<sup>34</sup> the Choctaw Nation thereafter moved the Oklahoma Supreme Court to stay all state-court proceedings in *Griffith and Dye* pending arbitration.

**B. This Arbitration.**

The Arbitrating Compacting Parties have appointed me Sole Arbitrator pursuant to Part 12 of the Compacts, and I have accepted that appointment. The Arbitrating Compacting Parties have also agreed to the submission of these disputes on the basis of a paper Record and without a hearing or the taking of in-person testimony. I concur in the Arbitrating Compacting Parties' shared judgment that submission of these Compact disputes, and the necessarily-related issues regarding controlling extrinsic law, are susceptible to accurate resolution on the Record and without personal testimony.

The Choctaw and Chickasaw Nations submitted a joint Arbitration Statement (with extensive Appendices) on August 3, 2009. The Arbitrating Nations also submitted a proposed Award. In conformity with the established Schedule, the State timely objected to some specific components of the Arbitrating Nations' proposed Award, and the Arbitrating Nations timely responded thereto.

With the consent of the Arbitrating Compacting Parties, I established the Schedule for this Arbitration in conformity with their "shared desire that this

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<sup>33</sup> See Joint Referral, APP. 1.

<sup>34</sup> See 9 U.S.C. §§ 2, 3.

arbitration proceed as expeditiously as the Arbitrator deems appropriate in light of the importance of the issues subject to arbitration." *See* Joint Referral, APP. 1, at 2.

In the interests of prompt and efficient resolution of these disputes, the Arbitrating Compacting Parties have not required me to provide an exhaustively-documented or reasoned Award herein. Nevertheless — in the interests of transparency as well as efficiency — in Section III of this Award I provide a summary of my most pivotal findings and conclusions.

In providing the findings and conclusions I enumerate in Section III, I have remained mindful of the fact that the Arbitrating Compacting Parties have jointly decided that, subject only to the review contemplated by Parts 12(2) and 12(3) of the Compacts (and if and only if such is requested by an Arbitrating Compacting Party), they intend that this Award be binding and promptly enforced. Thus, I present my factual recitations and citations to legal authority in summary form. But by the same token, I am also aware that *de novo* review of my Award may be sought by the Choctaw Nation, the Chickasaw Nation, or by the State of Oklahoma in the United States District Court for the Western District of Oklahoma (subject to further federal-court appeal of that Court's decision if requested by an Arbitrating Compacting Party).<sup>35</sup> In simultaneously bearing those possibilities in mind, I have sought to strike an appropriate timeliness/efficiency/transparency balance in providing the findings, conclusions, and authority that constitute Section III.

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<sup>35</sup> *See* Joint Referral, APP. 1, at 1 (first ¶); *id.* at 2 (last ¶); *cf.* Compact pts. 12(2), 12(3).

### III.

#### FINDINGS AND CONCLUSIONS

##### A. Summary Of Findings And Conclusions.

As set forth in greater detail below, I conclude that the term "court of competent jurisdiction" as used in Part 6(C) of the Compacts should not be interpreted to include Oklahoma state courts, but should be interpreted to include the Arbitrating Nations' tribal courts. Before the Compacts were entered into, the claims for which the Arbitrating Nations consented to suit in Part 6 of the Compacts could not have been brought in Oklahoma state courts, although they could have been brought in tribal courts. Thus, the only way in which state court jurisdiction could be proper would be if in Part 6 of the Compacts the Arbitrating Nations explicitly consented to such state court jurisdiction. While it is true that the Compacting Parties could have specified that the claims at issue could only be brought in a tribal court, they also could have specified that a "court of competent jurisdiction" includes an Oklahoma state court. Thus, at best for those who have argued in favor of state court jurisdiction, the expression is in and of itself textually ambiguous.

Part 9 of the Compacts is very significant in providing that "[t]his Compact shall not alter tribal, federal or state civil adjudicatory or criminal jurisdiction." Since there was no relevant pre-existing state court jurisdiction before the Compacts, there was no new, altered state court jurisdiction after the Compacts.

This conclusion is bolstered whether contract interpretation or statutory interpretation analysis is employed to resolve the textually ambiguous phrase "court of competent jurisdiction." If contract interpretation principles are employed and the focus is on implementing the intent of the parties, it is evident from the positions taken by the Arbitrating Nations and the amici briefs

submitted by Governor Henry and Treasurer Meacham before the Oklahoma Supreme Court that the parties who negotiated the Compacts did not understand or intend the phrase "court of competent jurisdiction" to include Oklahoma state courts. And, as a matter of contract law generally, waivers are to be construed narrowly.

In terms of statutory interpretation, it is established that waivers of tribal sovereign immunity are to be read narrowly, and therefore must be explicit. At best, the phrase "court of competent jurisdiction" is ambiguous as used in the Compacts, and this hardly constitutes the kind of express waiver that the law requires. Congress has not deprived tribes of sovereign immunity in state court actions as part of IGRA. Relevant laws and tribal agreements are also to be construed so as not to infringe upon tribal sovereignty more than necessary.

**B. Specific Findings And Conclusions.**

1. To the extent that Sections I and/or II of this document reflect findings and/or conclusions not repeated in this Section III, Sections I and II are incorporated into this Section III.
2. The Choctaw Nation of Oklahoma and the Chickasaw Nation are both federally-recognized Indian tribes.
3. Federally-recognized Indian tribes, including the Choctaw and Chickasaw Nations, have sovereign immunity from suit unless explicitly abrogated by a federal statute or unequivocally waived, in whole or in part, by the tribe.
4. While some differences exist between the sovereign immunity from suit enjoyed by tribes, states, and the federal government,<sup>36</sup>

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<sup>36</sup> One example concerns the permissible sources of the federal power to statutorily abrogate the immunity. While Congress may only abrogate states' "Eleventh Amendment" immunity from suit when exercising the "implementing powers" of the Civil War Amendments, *see Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996), or the Article I Bankruptcy Power, *see Central Virginia Community College v. Katz*, 546 U.S. 356 (2006), the

those distinctions are immaterial to the issues presented by these disputes.<sup>37</sup>

5. As is the case with respect to asserted waivers of states' sovereign immunity, where a tribe's sovereign-immunity waiver is asserted to be effective in any court other than its own, the sovereign-immunity waiver must be express and unequivocal as to the courts of the other sovereign.<sup>38</sup>
6. As is the case with asserted waivers of states' sovereign immunity, there are no federal-law cognizable "implied waivers" of tribal sovereign immunity from suit.<sup>39</sup>
7. In consequence of the above tribal-immunity-waiver principles, and in further consequence of the "Indian law canons of

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congressional power to abrogate tribal immunity from suit is not limited to those sources, *cf. Kiowa Tribe v. Manufacturing Technologies, Inc.*, 523 U.S. 751, 758-59 (1998).

A second difference stems from the fact that states but not tribes were represented in the 1787 Constitutional Convention. Because of that, the United States Supreme Court has held that states consented to be sued by each other "in the plan of [that] Convention," but because of the absence of mutuality states did not consent to be sued by tribes in that plan. *See Blatchford v. Native Village of Noatak*, 501 U.S. 775, 782 (1991). (That principle also works in reverse. *See, e.g., Oklahoma Tax Comm'n v. Citizen Band Potawatomi Tribe*, 498 U.S. 505 (1991).)

<sup>37</sup> *Cf., e.g., Native American Distributing v. Seneca-Cayuga Tobacco Co.*, 546 F.3d 1288, 1295 (10<sup>th</sup> Cir. 2008) ("We see no reason to treat tribal immunity any differently than federal sovereign immunity in this context.").

<sup>38</sup> *See, e.g., Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 99 (1984) (states); *Garcia v. Akwesasne Hous. Auth.*, 268 F.3d 76, 82 (2<sup>nd</sup> Cir. 2001) (tribes); *Kizis v. Morse Diesel*, 794 A.2d 498, 503 (Conn. 2002) (tribes).

<sup>39</sup> *See, e.g., College Savings Bank v. Florida Prepaid Postsecondary Education Expense Bd.*, 527 U.S. 666, 680 (1999) (overruling — for arguably the third time — the "implied waiver" approach of *Parden v. Terminal Ry.*, 377 U.S. 184 (1964)); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58-59 (1978) ("It is settled that a waiver of sovereign immunity cannot be implied but must be unequivocally expressed." (internal quotation marks omitted)); *Native American Distributing*, 546 F.3d at 1293 (same).

construction,"<sup>40</sup> material, non-contrived Compact ambiguities with respect to the sweep of any tribal sovereign-immunity waiver would necessarily be resolved in the manner least intrusive to the sovereignties of the Choctaw and Chickasaw Nations.

8. There is no congressional abrogation of either the Choctaw or Chickasaw Nations' sovereign immunities that would permit any patron of either of those Nations' Class III Compact-governed gaming facilities to bring a state-court tort or prize award suit against either of those Nations.
9. In consequence, the only basis on which the Choctaw Nation or the Chickasaw Nation (or their gaming enterprises) might be subjected to such a suit — in any court — is to whatever extent (and in whatever court) those Nations have expressly waived their sovereign immunity (or that of their gaming enterprises) in their respective Class III gaming Compacts.
10. No waiver of the sovereign immunity of either the Choctaw Nation or the Chickasaw Nation applicable to any Class III casino patron tort or prize suit (or any Class III casino-related suit by any other person) in any court is to be found anywhere in the Choctaw or Chickasaw Nations' Compacts outside of Part 6 thereof.
11. Parts 6(A) and 6(B) of the Choctaw and Chickasaw Nations' Class III gaming Compacts, read *in pari materia* with other Compact provisions, impose the obligation to provide a due process forum for covered tort and prize claims on the Choctaw and Chickasaw Nations.
12. The references to sovereign-immunity waivers in Parts 6(A) and 6(B) of the Choctaw and Chickasaw Nations' Class III Compacts do not operate independently of Part 6(C) thereof, but rather are textually qualified by Parts 6(A)(2), 6(A)(9), 6(B)(1), and 6(B)(11) (*inter alia*), which also incorporate all of the limitations contained in Compact Part 6(C) — including the "in a court of competent jurisdiction" limitation on the court(s) in which those Nations' Part 6 sovereign-immunity waivers are effective.

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<sup>40</sup> See, e.g., *Montana v. Blackfeet Tribe*, 471 U.S. 759, 766 (1985).

13. The phrase "court of competent jurisdiction" is at least in and of itself textually ambiguous.<sup>41</sup> The term is not defined in Part 3 of the Compacts, which defines a number of other terms.
14. Unlike as is the case with respect to New Mexico's Model Class III gaming Compact (which explicitly defines "courts of competent jurisdiction" to include state courts<sup>42</sup>), Oklahoma's Model Class III gaming Compact contains no definition of "a court of competent jurisdiction" in the latter's definitional Part 3.
15. The types of cases as to which the Choctaw and Chickasaw Nations' limited Compact Part 6 tribal-sovereign-immunity waivers apply are monetary tort and prize claims that arise on Choctaw or Chickasaw tribal lands, within Choctaw or Chickasaw Indian country, at Choctaw or Chickasaw Class III Compact-governed gaming facilities, and which are brought or would be brought against the Choctaw or Chickasaw Nations and/or any of their gaming "arms" or enterprises.
16. Part 9 of the Choctaw and Chickasaw Nations' Compacts<sup>43</sup> adopts and incorporates into those Compacts by reference the body of law that controls Oklahoma state courts' civil-adjudicatory jurisdiction over Indian country-arising monetary claims against those Nations, their gaming "arms," or enterprises.
17. The Oklahoma Enabling Act required Oklahoma to disclaim jurisdiction over Indian lands as a condition of achieving statehood.<sup>44</sup>
18. While federal common-law principles may also result in the denial of state jurisdiction (of any type) absent a specifically-authorizing

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<sup>41</sup> See, e.g., *United States v. Morton*, 467 U.S. 822, 828 (1984).

<sup>42</sup> See *Doe v. Santa Clara Pueblo*, 154 P.3d 644, 647-48 & n.3 (N.M. 2007) (discussing and citing N. MEX. MODEL COMPACT §§ 8(A), 8(D) (codified at N. MEX. STAT. ANN. § 11-13A-1 *et seq.*).

<sup>43</sup> See Compact pt. 9 ("This Compact *shall not alter* tribal, federal or state civil adjudicatory or criminal jurisdiction." (emphasis added)).

<sup>44</sup> See, e.g., *Washington v. Yakima Indian Nation*, 439 U.S. 463, 481 & n.25 (1979); *cf.* OKLA. CONST. art. I, § 3.

federal statute, "a state will certainly be without jurisdiction if its authority is preempted under familiar principles of preemption."<sup>45</sup>

19. "Implied" preemption, "obstacle" preemption, "conflict" preemption, and "express" preemption are all "familiar" forms of Supremacy-Clause-cognizable federal preemption.<sup>46</sup>
20. In 1953, the adoption of "Public Law 280"<sup>47</sup> — in which Congress granted five States Indian-country criminal jurisdiction and civil-adjudicatory<sup>48</sup> jurisdiction, and provided the exclusive method for states not explicitly granted such jurisdiction by Public Law 280 or another federal statute to acquire it<sup>49</sup> — preempted Oklahoma courts' Indian-country civil-adjudicatory jurisdiction in the subject-areas in which the Oklahoma-specific federal statutes had not granted it. Oklahoma is not a Public Law 280 state.<sup>50</sup>

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<sup>45</sup> *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 333-334 (1983).

<sup>46</sup> See, e.g., *Crosby v. Foreign Trade Council*, 530 U.S. 363 (2000); *Gade v. National Solid Waste Mgm't Ass'n*, 505 U.S. 88 (1992); *Hines v. Davidowitz*, 312 U.S. 52 (1941).

<sup>47</sup> Act of Aug. 15, 1953, ch. 505, 67 Stat. 588. At the time of its 1953 enactment, Public Law 280 applied to five states, California, Minnesota, Nebraska, Oregon and Wisconsin. It was later applied to Alaska upon statehood.

<sup>48</sup> See, e.g., *Bryan v. Itasca County*, 426 U.S. 373, 377-93 (1976) (distinguishing state "civil"-adjudicatory jurisdiction from state regulatory or taxation jurisdiction for Public Law 280-applicability purposes).

<sup>49</sup> See, e.g., *Three Affiliated Tribes of the Fort Berthold Reservation v. Wold Eng'g*, 476 U.S. 877, 884-85 (1986); *Bryan*, 426 U.S. at 386; *Kennerly v. District Ct.*, 400 U.S. 423, 424-25 (1971); *Williams v. Lee*, 358 U.S. 217, 221 (1959) ("Significantly, when Congress has wished the States to exercise this [criminal and civil-adjudicatory] power, it has expressly granted them the jurisdiction which *Worcester v. State of Georgia* had denied." (emphasis added)).

<sup>50</sup> See *supra* note 49 (citing cases); cf. *Oklahoma Tax Comm'n v. Sac & Fox Nation*, 508 U.S. 114, 125 (1993) (noting Oklahoma's status as a "non-Public Law 280" state).

21. The 1968 amendments to Public Law 280<sup>51</sup> required tribal consent to any future state acquisition of Public Law 280 civil-adjudicatory jurisdiction,<sup>52</sup> and there has been no such tribal consent in Oklahoma.
22. Because tribal courts have civil-adjudicatory jurisdiction over Indian country-arising monetary suits against tribes and/or tribal members<sup>53</sup> (and putting aside for the moment the separate issue of tribal sovereign immunity), such courts are within the category of "a court of competent jurisdiction" within the meaning of Compact Part 6(C).
23. Because Part 9 of the Choctaw and Chickasaw Nations' Class III gaming Compacts preserves the civil-adjudicatory jurisdiction *status quo ante*, and because before the Compacts those Nations' designated forums had such jurisdiction over Indian country-arising monetary suits against the Nations but Oklahoma's state courts did not, *in pari materia* construction of Parts 6(C) and 9 results in the conclusion that those Nations' Compact Part 6(C) sovereign-immunity waivers are applicable only in the Nations' own designated forums.
24. In light of the preceding findings and conclusions, "a court of competent jurisdiction" as used in Compact Part 6(C) means "a court which at the time the Compact was entered into would have otherwise had civil adjudicatory jurisdiction to hear and decide the types of cases as to which the tribe's sovereign immunity is being waived, or a court which was expressly granted that civil adjudicatory jurisdiction pursuant to the Compact." I conclude that an Oklahoma state court does not fit into this meaning of "court of competent jurisdiction," while an Arbitrating Nations' tribal court does.

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<sup>51</sup> See Pub. L. No. 90-284, tit. IV, §§ 402, 403, 82 Stat. 78 (1968) (codified in material part at 25 U.S.C. § 1322 and 28 U.S.C. § 1360 note).

<sup>52</sup> See 25 U.S.C. § 1322.

<sup>53</sup> See, e.g., *Williams v. Lee*, 358 U.S. 217 (1959); see also, e.g., *Griffith*, 2009 OK 51 (Opinion of KAUGER, J.) ¶ 5 n.4 (collecting cases).

The specific declaratory relief based on the above findings and conclusions is provided in Part IV, below.

IV.

**DECLARATORY RELIEF GRANTED**

I award to the Choctaw and Chickasaw Nations relief in the form of the following Declarations.

1. Preemptive federal law provides that the Class III gaming activities and facilities of the Choctaw and Chickasaw Nations are subject to the terms and conditions of those Nations' Class III gaming Compacts.
2. There is no congressional abrogation of the Choctaw or Chickasaw Nations' sovereign immunities in the Indian Gaming Regulatory Act (or elsewhere in federal law) that would permit any monetary tort or prize claim to be brought against the Choctaw Nation or the Chickasaw Nation, or any gaming "arm," thereof, in any Oklahoma state court.
3. Federal law requires that any cognizable tribal waiver of sovereign immunity be unequivocally expressed, not implied.
4. No waiver of the Choctaw or the Chickasaw Nations' sovereign immunities from any Class III casino-related money damages tort, prize, or other suit in any Oklahoma state court is to be found *outside of* Part 6 of those Nations' Class III gaming Compacts with the State of Oklahoma.
5. The references to tribal (and/or enterprise) sovereign-immunity waivers found in Parts 6(A) and 6(B) of the Choctaw and Chickasaw Nations' Class III gaming Compacts with the State of Oklahoma are not independent or separate waivers that permit the limitations found in Compact Part 6(C) to be ignored, but rather the Part 6(A) and 6(B) waiver references are textually qualified by Parts 6(A)(2), 6(A)(9), 6(B)(1), and 6(B)(11), which incorporate

all of the additional sovereign-immunity-waiver limitations contained in those Compacts' Part 6(C).

6. The tribal (and/or enterprise) sovereign-immunity-waiver references in Parts 6(A) and 6(B) of the Choctaw and Chickasaw Nations' Class III gaming Compacts are therefore subject to Part 6(C)'s additional waiver limitations — including Part 6(C)'s "in a court of competent jurisdiction" limitation on the forum(s) in which any tribal (and/or enterprise) sovereign-immunity waiver is effective.

7. The phrase "court of competent jurisdiction" in Part 6(C) of the Choctaw and Chickasaw Nations' Class III gaming Compacts is in and of itself textually ambiguous, and is not defined in those Compacts' definitional Part 3.

8. Part 9 of the Choctaw and Chickasaw Nations' Class III gaming Compacts preserves, adopts, and incorporates by reference into those Compacts the controlling law establishing the limits of the Indian-country civil-adjudicatory jurisdiction of both tribal courts and Oklahoma's state courts.

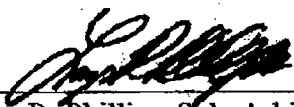
9. Because Part 9 of the Choctaw and Chickasaw Nations' Class III gaming Compacts with the State of Oklahoma leaves Oklahoma courts' civil-adjudicatory jurisdiction precisely where it was before the Compacts (*i.e.*, absent), no Oklahoma state court is a "court of competent jurisdiction" within the meaning of Part 6(C) of those Compacts.

10. Because nowhere in the Choctaw and Chickasaw Nations' Class III gaming Compacts is there any material tribal sovereign-immunity waiver except "in a court of competent jurisdiction," and because Part 9 preserved, adopted, and incorporated-by-reference the jurisdictional *status quo ante*, there is no express waiver anywhere in the Compacts of either the Choctaw Nation's

or the Chickasaw Nation's sovereign immunity from any relevant Indian country-arising Class III casino-related lawsuit in any Oklahoma state court.

11. Tribal courts (and tribally-designated forums) have civil-adjudicatory jurisdiction over relevant Indian country-arising Class III casino-related lawsuits against Indian tribes (including the Choctaw and Chickasaw Nations), and may exercise jurisdiction over such cases to the extent permitted by (and under the conditions established by) those Nations' sovereign-immunity waivers in the Compacts.

The foregoing components of the Declaratory Relief ordered herein shall be binding upon all Arbitrating Compacting Parties immediately upon issuance of this Award.



---

Layn R. Phillips, Sole Arbitrator  
ALTERNATIVE DISPUTE RESOLUTION CENTER  
Irell & Manella LLP  
840 Newport Center Drive, Suite 450  
Newport Beach, CA 92660-6324  
Telephone: (949) 760-5288  
Fax: (949) 760-5289

**JOINT REFERRAL TO BINDING ARBITRATION OF DISPUTES UNDER AND/OR  
ARISING FROM THE CHOCTAW NATION OF OKLAHOMA AND STATE OF  
OKLAHOMA GAMING COMPACT AND THE CHICKASAW NATION AND STATE  
OF OKLAHOMA GAMING COMPACT**

**July 20, 2009**

**OKLAHOMA CITY, OKLAHOMA**

**HON. GREGORY E. PYLE  
CHIEF, CHOCTAW NATION OF  
OKLAHOMA**

**HON. BILL ANDATUBBY  
GOVERNOR, CHICKASAW NATION**

**HON. BRAD HENRY  
GOVERNOR, STATE OF OKLAHOMA**

**Bob Rabon, OBA #7373  
RABON, WOLF & RABON  
402 E. Jackson  
P.O. Box 726  
Hugo, OK 74743  
(580) 326-6427  
(580) 326-6032 (fax)**

**Stephen H. Greetham, OBA #21,510  
CHICKASAW NATION  
DIVISION OF COMMERCE  
2020 Lonnie Abbott Boulevard  
Ada, OK 74820  
(580) 272-5236  
(580) 272-2077 (fax)**

**Lisa Tipping Davis, OBA #10,988  
GENERAL COUNSEL  
OFFICE OF THE GOVERNOR  
State Capitol Building  
2300 N. Lincoln Boulevard  
Suite 212  
Oklahoma City, OK 73105  
(405) 521-2342**

The Choctaw Nation of Oklahoma, the Chickasaw Nation, and the State of Oklahoma [hereinafter collectively, "the Arbitrating Compacting Parties"], agree to this joint referral to binding arbitration, as provided herein. The Arbitrating Compacting Parties submit to binding arbitral interpretation in light of controlling extrinsic law the issue of whether, under the Choctaw Nation of Oklahoma and State of Oklahoma Gaming Compact and the Chickasaw Nation and State of Oklahoma Gaming Compact ["the Compacts" or "those Compacts"], jurisdiction over all Compact-based tort claim and/or prize claim lawsuits lies exclusively in Choctaw Nation or Chickasaw Nation forums. The Arbitrating Compacting Parties further agree that the Arbitrator may resolve such ancillary factual and/or legal issues as the Arbitrator deems necessary to the resolution of this dispute. As provided herein, the Arbitrating Compacting Parties also agree to the appointment of a named Arbitrator, the procedures for arbitration, and the place of and time for arbitration. The Arbitrating Compacting Parties agree to arbitration outside of AAA requirements, rules, and administration, and agree to the entry of judgment on, and/or the review of the resulting Arbitration Award in the United States District Court for the Western District of Oklahoma under the terms and conditions established by Parts 12(2) and 12(3) of those Compacts.<sup>1</sup> The Arbitrating Compacting Parties further agree that the ultimately resulting federal court judgment, subject only to Part 12(2) and (3)-provided review, shall be binding on all courts, and that the ultimately resulting federal court judgment deriving therefrom may be enforced (but may not be re-reviewed) by any other court.

Pursuant to Part 12(1) and/or Parts 12(2) and (3) of the Compacts, the Arbitrating Compacting Parties have agreed to dispense with any AAA role in Arbitrator appointment, the AAA Rules, and AAA administration of this Arbitration.<sup>2</sup>

The Arbitrating Compacting Parties hereby appoint the Hon. Layn R. Phillips, formerly Judge of the United States District Court for the Western District of Oklahoma, as the sole Arbitrator. The Compacting Parties agree that Judge Phillips is exceptionally well qualified<sup>3</sup> to arbitrate this matter.

The procedures for this Arbitration shall be those mutually agreeable to the named Arbitrator and to all Arbitrating Compacting Parties. In the event of any disagreement, the procedures prescribed by the Arbitrator shall be final as to any area(s) of disagreement.

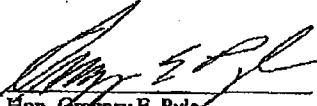
<sup>1</sup> The Choctaw and Chickasaw Nations provided Compact Part 12(1) Notices of Disputes over interpretations of their Compacts to the State of Oklahoma, as required by Compact Part 14, on February 4, 2009, and March 6, 2009, respectively. The Arbitrating Compacting Parties have been engaged in informal dispute-resolution discussions since then pursuant to Part 12(1) of their Compacts. This Joint Referral is agreed to by the Arbitrating Compacting Parties under Compact Part 12(1) and/or Compact Parts 12(2) and (3).

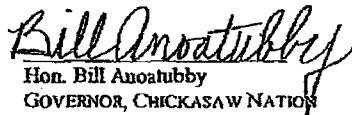
<sup>2</sup> Without deciding that any particular set of AAA rules might have otherwise applied, the Arbitrating Compacting Parties note that Rule R-1(a) of the AAA Commercial Arbitration Rules provides that "[t]he parties, by written agreement, may vary the procedures set forth in these rules."

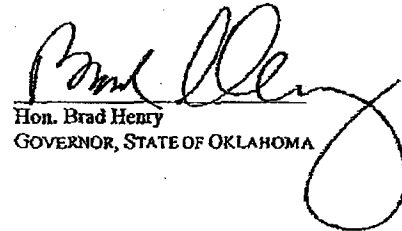
<sup>3</sup> Judge Phillips has also sat by designation on panels of the United States Court of Appeals for the Tenth Circuit. Judge Phillips is now in full-time legal practice (specializing in arbitration and mediation) with the firm of Irell & Manella, LLP. Judge Phillips founded, and now heads, that firm's ADR Center in Newport Beach, California.

The Arbitrating Compacting Parties express their shared desire that this arbitration proceed as expeditiously as the Arbitrator deems appropriate in light of the importance of the issues subject to arbitration.

The place of this arbitration shall be deemed to be Oklahoma City, Oklahoma, and within the jurisdiction of the United States District Court for the Western District of Oklahoma, and in no other place, whether or not the representatives of the Arbitrating Compacting Parties physically signed this arbitration agreement in that location, and whether or not the Arbitrator deems it appropriate to perform research, conduct arbitration-related business, and/or transmit the Arbitration Award to the Arbitrating Compacting Parties from any other place.

  
Hon. Gregory E. Pyle  
CHIEF, CHOCTAW NATION OF  
OKLAHOMA

  
Hon. Bill Anoatubby  
GOVERNOR, CHICKASAW NATION

  
Hon. Brad Henry  
GOVERNOR, STATE OF OKLAHOMA

Bob Rabon, OBA #7373  
RABON, WOLF & RABON  
402 E. Jackson  
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Stephen H. Greetham, OBA  
#21,510  
CHICKASAW NATION  
DIVISION OF COMMERCE  
2020 Lonnie Abbott Boulevard  
Ada, OK 74820  
(580) 272-5236  
(580) 272-2077 (fax)

Lisa Tipping Davis, OBA #10,988  
GENERAL COUNSEL  
OFFICE OF THE GOVERNOR  
State Capitol Building  
2300 N. Lincoln Boulevard  
Suite 212  
Oklahoma City, OK 73105  
(405) 521-2342

County of Bryan )

State of Oklahoma )

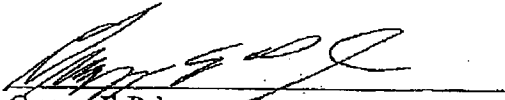
ss

**AFFIDAVIT OF GREGORY E. PYLE**

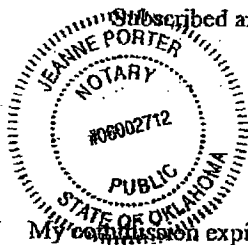
COMES now affiant, Gregory E. Pyle, of lawful age and duly sworn under oath, and states the following:

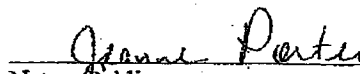
1. My name is Gregory E. Pyle, and my business address is 16<sup>th</sup> and Locust Streets, Durant, OK 74702.
2. I am the Chief of the Choctaw Nation of Oklahoma.
3. The document captioned "Joint Referral to Binding Arbitration of Disputes Under and/or Arising From the Choctaw Nation of Oklahoma and State of Oklahoma Gaming Compact and the Chickasaw Nation and State of Oklahoma Gaming Compact" is a true, correct, and authentic copy of the Arbitration Agreement personally signed by me in my capacity as Chief of the Choctaw Nation of Oklahoma on July 20, 2009.

FURTHER AFFIANT SAYETH NOT.

  
Gregory E. Pyle

Subscribed and sworn to before me this 20<sup>th</sup> day of July, 2009.



  
Notary Public

My commission expires: 3-13-2010

County of Pontotoc

State of Oklahoma

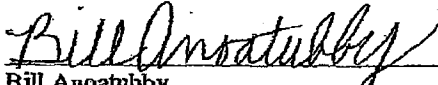
)  
) ss  
)

**AFFIDAVIT OF BILL ANOATUBBY**

COMES now affiant, Bill Anoatubby, of lawful age and duly sworn under oath, and states the following:

1. My name is Bill Anoatubby, and my business address is P.O. Box 1548, Ada, OK 74820.
2. I am the Governor of the Chickasaw Nation.
3. The document captioned "Joint Referral to Binding Arbitration of Disputes Under and/or Arising From the Choctaw Nation of Oklahoma and State of Oklahoma Gaming Compact and the Chickasaw Nation and State of Oklahoma Gaming Compact" is a true, correct, and authentic copy of the Arbitration Agreement personally signed by me in my capacity as Governor of the Chickasaw Nation on July 20, 2009.

FURTHER AFFIANT SAYETH NOT.

  
Bill Anoatubby

Subscribed and sworn to before me this 20 day of July, 2009.

  
Notary Public

My commission expires: 4-27-10

**Tammy L. Gray**  
State of Oklahoma Notary Public  
County: Pontotoc  
Commission Number: 86094258  
Expires April 27, 2010

County of Oklahoma )  
 ) ss  
State of Oklahoma )

AFFIDAVIT OF LISA TIPPING DAVIS


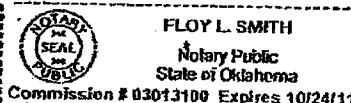
COMES now affiant, Lisa Tipping Davis, of lawful age and duly sworn under oath, and state the following:

1. My name is Lisa Tipping Davis and my business address is 2300 N. Lincoln Blvd., Room 212, Oklahoma City, OK 73105.
2. I am the general counsel for Governor Brad Henry, Governor of the State of Oklahoma and have served in that capacity since October 2003.
3. The document captioned "Joint Referral to Binding Arbitration of Disputes Under and/or Arising From the Choctaw Nation of Oklahoma and State of Oklahoma Gaming Compact and the Chickasaw Nation and State of Oklahoma Gaming Compact" is a true, correct and authentic copy of the Arbitration Agreement signed by Governor Brad Henry in his capacity as Governor of the State of Oklahoma on July 20, 2009.

FURTHER AFFIANT SAYETH NOT.

  
Lisa Tipping Davis

Subscribed and sworn to before me this 20th day of July, 2009.

**CERTIFICATE OF MAILING**

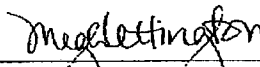
On this 25th day of August, 2009, I mailed copies of this Arbitration Award to counsel for the Arbitrating Compacting Parties herein:

Bob W. Rabon  
RABON, WOLF & RABON  
402 East Jackson  
P.O. Box 726  
Hugo, OK 74743  
(580) 326-6427  
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OKLAHOMA AND THE CHICKASAW NATION

Dennis W. Atrow  
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SCHOOL OF LAW  
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Ada, OK 74820  
(580) 272-5236  
(580) 272-2077 (fax)

Hon. Brad Henry  
Governor, State of Oklahoma  
c/o Lisa Tipping Davis  
GENERAL COUNSEL,  
OFFICE OF THE GOVERNOR  
State Capitol Building  
2300 N. Lincoln Boulevard, Suite 212  
Oklahoma City, OK 73105  
(405) 521-2342

  
\_\_\_\_\_  
Meghan Lettington

# **EXHIBIT 7**



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## IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Loyman Cossey, Plaintiff/Respondent,  vs.  Cherokee Nation Enterprises, LLC formerly known as Cherokee Nation Enterprises, Inc. and Cherokee Nation Enterprises, Defendant/Petitioner.	<b>No. CI - 105300</b> <b>(Certified Interlocutory)</b>  Filed: 11/21/2007 Closed: 06/11/2009  Appealed from: ROGERS County District Court  <b>FOR PUBLICATION</b>  <u>212 P.3d 447</u> <u>2009 OK 6</u>
--	--

### Parties

Cherokee Nation Enterprises , Petitioner  
Cherokee Nation Enterprises LLC , Petitioner  
Cossey, Loyman , Respondent

### Attorneys

#### Attorney

Burrage, Michael Sean(Bar # 15078)  
400 W Fourth St  
PO Box 309  
Claremore, OK 74018

Green, Jesse D(Bar # 3564)  
310 E. Main St.  
Ada, OK 74820

Greetham, Stephen Harold(Bar # 21510)  
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2020 Lonnie Abbott Blvd.  
Ada, OK 74820

Hartley-Kelso, Deanna Lynn (Bar # 19272)  
520 E. Arlington  
Ada, OK 74820

Mallett, Bradley Harold(Bar # 15810)  
400 W Fourth St  
PO Box 309  
Claremore, OK 74018

Meacham, Scott Allison(Bar # 13216)  
2300 N. LINCOLN BLVD., RM. 217  
\*\*\*\*\*INTERAGENCY MAIL\*\*\*\*\*  
OKC, OK

Rabon, Robert Lee(Bar # 13523)

#### Represented Parties

Cherokee Nation Enterprises

Cherokee Nation Enterprises

402 E JACKSON  
PO BOX 726  
HUGO, OK 74743

Ramsey, Mark Harrison(Bar # 11159)  
400 W. 4TH ST.  
PO BOX 309  
CLAREMORE, OK 74018

Cherokee Nation Enterprises

TAWWATER, DARREN M(Bar # 18854)  
ONE LEADERSHIP SQUARE  
211 NORTH ROBINSON, SUITE 1950  
OKLAHOMA CITY, OK 73102

Cossey Loyman

Tawwater, Larry A.(Bar # 8852)  
ONE LEADERSHIP SQUARE  
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Cossey Loyman

Taylor, Stratton(Bar # 10142)  
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PO BOX 309  
CLAREMORE, OK 74018

Cherokee Nation Enterprises

Tipping Davis, Lisa(Bar # )  
General Counsel Governors Office  
\*\*\*\*interagency mail\*\*\*\*  
Oklahoma City, OK 73105

## Events

Event	Party	Docket	Reporter
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## Lower Court Counts and Other Information

Count	Case Number	Statute	Crime	Special	Sentence	Judge	Reporter
-	<u>CJ-2006-762</u>	-				Post, Dynda R.	

## Docket

Date	Code	Entry Date	Serial #
10-23-2007	DOOA	21 Nov 2007 16:20:11:527	1851928
		DATE OF ORDER APPEALED	
11-21-2007	CASE	21 Nov 2007 16:12:53:543	1851925
		CERTIFIED INTERLOCUTORY INITIAL FILING	
11-21-2007	PAY	21 Nov 2007 16:13:34:260	1851926
		RECEIPT # 37549 ON 11/21/2007. PAYOR: STRATTON TAYLOR TOTAL AMOUNT PAID: \$ 200.00. LINE ITEMS: \$200.00 ON CERTIFIED INTERLOCUTORY INITIAL FILING.	
11-21-2007	PETF	21 Nov 2007 16:21:15:510	1851929
		PET FOR CERT CERTIFIED INTERLOCUTORY ORDER FILED BY TAYLOR FOR CHEROKEE NATION ET AL-PETR/DEF	

---

11-21-2007 TEXT	21 Nov 2007 16:22:18:100	1851930
	ENTRY OF APPEARANCE BY STRATTON TAYLOR, BRADLEY H. MALLET AND MARK RAMSEY	

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12-05-2007 TEXT	05 Dec 2007 15:13:11:450	1854031
	ENTRY OF APPEARANCE OF TAWWATER & TAWWATER FOR RSPNT COSSEY	

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12-05-2007 RESP	05 Dec 2007 15:13:40:700	1854032
	RESPONSE TO PETITION FOR CERTIORARI CERTIFIED INTERLOCUTORY ORDER	

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01-07-2008 TEXT	07 Jan 2008 13:50:44:983	1858244
	JE: DFNDT/PETNR'S PET F/CERT IS GRANTED. C/ATTYS DC JUDGE	

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01-07-2008 ASNJ	09 Jan 2008 17:22:24:973	1858810
	ASSIGNED TO SUPREME COURT	

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01-10-2008 TEXT	10 Jan 2008 14:16:58:940	1858872
	JE: PARTIES ARE DIRECTED T/ORDER RECORD & SECURE COMPLETION AS REQUIRED B/OK SUP CRT RULE 1.54 B/2-6-08. BRIEFS SH/B/FILED IN COMPLIANCE W/OK SUP CRT RULE 1.55. N/ATTYS DCC	

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01-16-2008 DSRC	16 Jan 2008 10:14:26:303	1859664
	DESIGNATION OF RECORD	

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01-24-2008 NTCP	24 Jan 2008 12:19:30:140	1861184
	NOTICE OF COMP W/INDEX	

---

02-13-2008 ATBC	13 Feb 2008 10:13:35:703	1864198
	BRIEF IN CHIEF OF DEFS/PETRS CHEROKEE NATION ENTERPRISES, LLC AND CHEROKEE NATION ENTERPRISES, INC	

---

02-14-2008 ACRB	14 Feb 2008 08:44:55:310	1864363
	BRIEF AMICI CURIAE OF THE CHOCTAW NATION OF OKLAHOMA AND THE CHICKASAW NATION IN SUPPORT OF DEFENDANT-PETITIONER CHEROKEE NATION ENTERPRISES, L.L.C.	

---

02-22-2008 AEAB	22 Feb 2008 16:15:11:407	1865859
	RESPONSE BRIEF OF PLNTF/RSPNT, LOYMAN COSSEY	

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02-27-2008 ATRB	27 Feb 2008 15:09:11:907	1866716
	REPLY BRIEF OF DFNDTS/PETNRS CHEROKEE NATION ENTERPRISES, L.L.C. AND CHEROKEE NATION ENTERPRISES, INC.	

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03-11-2008 TEXT	11 Mar 2008 13:30:55:870	1869022
	DFDNT/PETNR'S SUPPLEMENTAL AUTHORITY	

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03-14-2008 RORD	14 Mar 2008 15:27:56:140	1869817
	RECORD ORDERED	

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03-20-2008 ORGR	20 Mar 2008 13:48:46:410	1870638
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2 VOLUME ORIGINAL RECORD - 337 PAGES

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03-20-2008 RCCT	20 Mar 2008 13:54:19:643	1870639
	RECORD TO COURT - NP	

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12-23-2008 TEXT	23 Dec 2008 15:04:33:783	1916317
	PETITIONERS SUPPLEMENTAL AUTHORITY	

---

01-20-2009 OPIN	20 Jan 2009 15:06:11:520	1920169
	JE: OPINION-----AFFIRMED IN PART, REVERSED IN PART AND REMANDED----- WATT, J. CONCUR: TAYLOR, VCJ, OPALA, WATT, WINCHESTER, JJ. CONCURRING SPECIALLY: COLBERT, J. CONCUR IN PART, DISSENT IN PART: EDMONDSON, CJ, KAUGER, J. DISSENT: HARGRAVE, REIF, JJ. C/ATTYS DC JUDGE PRESS WEST OBJ MDC JR (2009 OK 6)	

---

01-20-2009 TEXT	20 Jan 2009 15:07:10:270	1920170
	JE: TAYLOR, VCJ, W/WHOM OPALA, J, JOINS, CONCURRING ETC. C/SAME AS OPIN (2009 OK 6)	

---

01-20-2009 TEXT	20 Jan 2009 15:08:34:550	1920172
	JE: KAUGER, J, W/WHOM EDMONDSON, CJ, JOINS, CONCURRING IN PART/DISSENTING IN PART ETC. C/SAME AS OPIN (2009 OK 6)	

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01-20-2009 TEXT	20 Jan 2009 15:09:09:300	1920174
	JE: COLBERT, J, CONCURRING SPECIALLY ETC. C/SAME AS OPIN (2009 OK 6)	

---

01-20-2009 TEXT	20 Jan 2009 15:09:35:940	1920175
	JE: REIF, J, DISSENTING ETC. C/SAME AS OPIN (2009 OK 6)	

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01-20-2009 1214	20 Jan 2009 15:09:51:190	1920176
	AFFIRMED IN PART; REVERSED IN PART AND REMANDED (OPINION)	

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02-04-2009 TEXT	04 Feb 2009 12:59:28:683	1922471
	PETNRS' MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REHEARING	

---

02-05-2009 TEXT	05 Feb 2009 15:35:03:877	1922781
	JE: ON WRITTEN APPL, PETRS, CHEROKEE NATION ENTERPRISES, LLC ETC AND CHEROKEE NATION ENTERPRISES ARE GRANTED TO 2-23-09 TO FILE PET FOR REHEARING. C/ATTYS DC JUDGE	

---

02-23-2009 TEXT	23 Feb 2009 14:12:59:117	1925000
	APPLICATION OF BRAD HENRY, GOVERNOR OF THE STATE OF OKLAHOMA, AND OF SCOTT MEACHAM, TREASURER OF THE STATE OF OKLAHOMA, FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF DEFENDANTS/PETITIONERS PETITION FOR REHEARING (ATTYS LISA TIPPING DAVIS AND SCOTT MEACHAM)	

---

02-23-2009 TEXT	23 Feb 2009 15:44:25:347	1925058
	ENTRY OF APPEARANCE BY GRAYDON DEAN LUTHEY, JR	

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02-23-2009 REHE	23 Feb 2009 15:46:02:877	1925059
	DEFENDANTS/PETITIONERS PETITION FOR REHEARING AND BRIEF IN SUPPORT (OC)	

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02-24-2009 TEXT 24 Feb 2009 15:31:18:300 1925282  
MOTION FOR LEAVE TO FILE STATEMENT AS AMICUS CURIAE IN SUPPORT OF  
DEFENDANT-PETITIONER'S PETITION FOR REHEARING (ATTYS DEANNA HARTLEY-  
KELSO, JESSE D. GREEN AND STEPHEN H. GREETHAM)

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02-24-2009 TEXT 24 Feb 2009 15:30:04:180 1925353  
MOTION OF THE CHOCTAW NATION OF OKLAHOMA FOR LEAVE TO FILE AMICUS  
CURIAE STATEMENT IN SUPPORT OF DEF/PETR'S PETITION FOR REHEARING  
(ROBERT L. RABON)

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03-02-2009 TEXT 02 Mar 2009 10:52:08:260 1926290  
JE: APPLS OF CHICKASAW NAT, CHOCTAW NAT, BRAD HENRY, GOVERNOR OF  
STATE OF OKLA, SCOTT MEACHAM, TREAS OF ST OF OKLA, FOR LEAVE TO FILE  
BRIEFS AMICI CURIAE ETC ARE GRANTED. BRIEFS SH/BE IN FULL COMPL WITH SUP  
CT R 1.12 AND FILED BY 3-9-09. RESP L. COSSEY MAY RESP TO BRIEFS AMICI  
CURIAE BY 3-19-09. C/ATTYS DC JUDGE

---

03-06-2009 ACBR 06 Mar 2009 16:06:09:550 1927262  
AMICUS CURIAE STATEMENT OF THE CHICKASAW NATION IN SUPPORT OF  
DEFENDANT-PETITIONER'S PETITION FOR REHEARING

---

03-09-2009 ACBR 09 Mar 2009 13:39:48:173 1927437  
STATEMENT AMICUS CURIAE OF THE CHOCTAW NATION OF OKLAHOMA IN  
SUPPORT OF DFNDT/PETNR'S PETITION FOR REHEARING

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03-09-2009 ACBR 09 Mar 2009 16:53:52:083 1927563  
BRIEF OF AMICUS CURIAE BRAD HENRY, GOVERNOR OF THE STATE OF OKLAHOMA  
AND SCOTT MEACHAM, TREASURER OF THE STATE OF OKLAHOMA ETC

---

03-12-2009 TEXT 12 Mar 2009 11:00:39:957 1928080  
CORRECTIONS TO STATEMENT AMICUS CURIAE OF THE CHOCTAW NATION OF  
OKLAHOMA IN SUPPORT OF DFNDT/PETNR'S PETITION FOR REHEARING

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03-19-2009 TEXT 19 Mar 2009 16:10:25:703 1929101  
PLNTF'S MOTION FOR EXTENSION OF TIME TO RESPOND TO THE AMICUS BRIEFS  
OF THE CHICKASAW NATION AND BRAD HENRY, GOVERNOR OF THE STATE OF  
OKLAHOMA AND SCOTT MEACHAM, TREASURER OF THE STATE OF OKLAHOMA

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03-24-2009 TEXT 25 Mar 2009 08:46:29:427 1929739  
JE: RESPNT, LOYMAN COSSEY IS GRANTED TO 3-30-09 TO RESPOND TO BRIEFS OF  
CHICKASAW NATION AND BRAD HENRY, GOVERNOR OF THE ST OF OKLA AND  
SCOTT MEACHAM, TRESURER OF THE ST OF OKLA. C/ATTYS DC JUDGE\*\*\*ENTRY  
CORRECTED\*\*\*

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03-30-2009 TEXT 30 Mar 2009 16:09:30:000 1930783  
COMBINED RESPONSE AND MOTION TO STRIKE THE STATEMENT OF AMICUS  
CURIAE, BRAD HENRY, GOVERNOR OF THE STATE OF OKLAHOMA AND SCOTT  
MACHAM, TREASURER OF THE STATE OF OKLAHOMA

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03-30-2009 ACBR 31 Mar 2009 08:04:03:620 1930815  
RESPONSE BRIEF OF PLNTF/RESP, LOYMAN COSSEY TO THE STATEMENT OF  
AMICUS CURIAE, CHOCTAW NATION

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06-11-2009 RHDE	11 Jun 2009 11:20:12:597	1942764
JE: PETR'S REHEARING DENIED. CONCUR: TAYLOR, VCJ, OPALA, WATT, WINCHESTER, COLBERT, JJ. DISSENT: EDMONDSON, CJ, HARGRAVE, KAUGER (BY SEP WRITING), REIF, JJ. C/ATTYS DC JUDGE		
<hr/>		
06-11-2009 TEXT	11 Jun 2009 11:22:05:967	1942765
JE: KAUGER, J, DISSENTING TO DENIAL OF REHEARING ETC. C/ATTYS DC JUDGE PRESS WEST OBJ MDC JR (2009 OK 6)		
<hr/>		
06-11-2009 MAND	11 Jun 2009 11:22:25:827	1942766
MANDATE ISSUED		
<hr/>		
06-17-2009 RCMD	17 Jun 2009 13:36:13:340	1943805
RECEIPT FOR MANDATE		
<hr/>		
07-16-2009 TEXT	16 Jul 2009 15:31:57:290	1948488
ORGR RECEIVED FROM COURT		
<hr/>		
07-21-2009 RRCD	21 Jul 2009 10:05:58:657	1948898
RECORD RETURNED TO DISTRICT COURT		
<hr/>		
08-10-2009 RELW	10 Aug 2009 16:06:57:017	1951886
RELEASE CARD SENT TO WEST		
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Report Generated by The Oklahoma Court Information System at

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# **EXHIBIT 8**



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### IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

<p>Dorothy Griffith, Plaintiff/Appellant,</p> <p>vs.</p> <p>Choctaw Casino of Pocola, Oklahoma and the Choctaw Nation of Oklahoma, Defendants/Appellees.</p>	<p><b>No. DF - 104887</b> <b>(District Court Final Order or Judgment)</b></p> <p>Filed: 07/25/2007 Closed: 04/15/2010</p> <p>Appealed from: LE FLORE County District Court</p> <p><b>FOR PUBLICATION</b></p> <p><u>2009 OK 51</u></p>
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### Parties

Choctaw Casino Of Pocola , Appellee  
 Choctaw Nation Of Oklahoma , Appellee  
 Griffith, Dorothy , Appellant

### Attorneys

#### Attorney

Cable, Brett Daniel(Bar # 19426)  
 100 EAST CARL ALBERT PARKWAY  
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 MCALESTER, OK 74502

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McCroskey, Eddie A(Bar # 5931)  
 111 DEWEY  
 PO BOX 785  
 POTEAU, OK 74953

#### Represented Parties

Choctaw Casino Of Pocola  
 Choctaw Nation Of Oklahoma

Choctaw Casino Of Pocola  
 Choctaw Nation Of Oklahoma

Griffith Dorothy

### Events

Event	Party	Docket	Reporter
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### Lower Court Counts and Other Information

Count	Case Number	Statute	Crime	Special	Sentence	Judge	Reporter
-	CJ-2006-85	-				Knight, Ted A.	

### Docket

Date	Code	Entry Date	Serial #
06-21-2007	DOOA	25 Jul 2007 10:40:36:527	1831578
DATE OF ORDER APPEALED			
07-25-2007	CASE	25 Jul 2007 10:34:36:430	1831573
DISTRICT COURT FINAL ORDER OR JUDGMENT INITIAL FILING			
07-25-2007	PAY	25 Jul 2007 10:35:20:680	1831574
RECEIPT # 36193 ON 07/25/2007. PAYOR: EDDIE A MCCROSKEY TOTAL AMOUNT PAID: \$ 200.00. LINE ITEMS: \$200.00 ON DISTRICT COURT FINAL ORDER OR JUDGMENT INITIAL FILING.			
07-25-2007	PETF	25 Jul 2007 10:41:09:243	1831579
PETITION IN ERROR FILED BY MCCROSKEY FOR GRIFFITH-PLNTF/APLNT			
07-25-2007	TCON	25 Jul 2007 10:41:23:273	1831580
APPELLANT AGREEABLE TO SETTLEMENT CONFERENCE			
08-08-2007	TEXT	08 Aug 2007 10:56:01:613	1834021
JE: APLNT TO SH/CAUSE, NLT 8-21-07, WHY APPEAL SH/NOT BE DSMD AS UNTIMELY. ETC. N/ATTYS			
08-14-2007	TEXT	14 Aug 2007 10:37:16:783	1834927
ENTRY OF APPEARANCE OF CABLE & JANZEN FOR APLEES CHOCTAW CASINO OF POCOLA OK & CHOCTAW NATION OF OK			
08-14-2007	TEXT	14 Aug 2007 10:37:31:297	1834928
APLEES' MOTION TO DISMISS APPEAL			
08-21-2007	TEXT	21 Aug 2007 10:30:22:170	1835958
APLNT'S RESPONSE TO MOTION TO DISMISS APPEAL AND SHOW CAUSE WHY APPEAL SHOULD NOT BE DISMISSED			
08-23-2007	TEXT	23 Aug 2007 11:08:53:827	1836701
JE: APLNT'S RESP T/TH/COURT'S SHOW CAUSE ORDER APPEARS T/SATISFY TH/COURT'S INQUIRY INTO TH/TIMELINESS OF TH/COMMENCEMENT OF TH/APPEAL. ETC. TH/APPEAL M/PROCEED. N/ATTYS			
08-31-2007	RESP	31 Aug 2007 10:36:44:883	1838154
RESPONSE TO PETITION IN ERROR			
08-31-2007	ECON	31 Aug 2007 10:36:57:460	1838156
APPELLEE AGREEABLE TO SETTLEMENT CONFERENCE			
08-31-2007	TEXT	31 Aug 2007 10:45:37:220	1838172
APLEES' MOTION TO MAKE APPEALS COMPANION APPEALS			
09-19-2007	TEXT	19 Sep 2007 09:24:01:463	1840928
JE: MOT TO MAKE APPEALS COMP APPEALS IS DENIED, 104737 ALREADY ASSIGNED TO COA/OKC. CT NOTES APPEALS RELATED AND, WHEN AT ISSUE, APPEAL WILL BE ASSIGNED TO SAME REVIEWING CT. N/ATTYS DC CLERK COA/OKC			

10-18-2007 NTCP	18 Oct 2007 10:22:23:813 NOTICE OF COMPLETION W/INDEX	1845963
10-23-2007 TEXT	23 Oct 2007 14:01:49:977 MTN FOR LEAVE TO FILE BRIEF OF APLEES	1846798
11-02-2007 TEXT	02 Nov 2007 09:36:38:790 JE: ATBC DUE 60 DAYS AFTER NTCP. APPEAL H/BEEN CATEGORIZED BY CLK AS APPEAL FR/FINAL ORDER NOT SUBJECT T/R.1.36. N/ATTYS	1848697
12-14-2007 ATBC	14 Dec 2007 13:06:18:483 PLNTF/APLNT BRIEF IN CHIEF	1855413
01-10-2008 TEXT	10 Jan 2008 13:36:03:740 APLEES' MOTION TO STAY DUE DATE OF ANSWER BRIEF	1858839
01-14-2008 TEXT	14 Jan 2008 12:33:29:257 JE: APLEES' MOT F/LENGTHY STAY OF DUE DATE F/ANSWER BRIEF IS DENIED. BRIEFING SH/PROCEED. APLEES' ARE GRANTED T/2-11-08 T/FILE TH/BRIEF. N/ATTYS	1859313
02-11-2008 AEAB	12 Feb 2008 07:56:48:460 ANSWER BRIEF OF APLEES CHOCTAW NATION AND CHOCTAW CASINO OF POCOLA	1863878
02-11-2008 TEXT	12 Feb 2008 07:58:36:987 APLEES' APPENDIX	1863880
02-19-2008 TEXT	19 Feb 2008 10:10:17:650 NOTICE OF CORRECTION TO APLEE'S ANSWER BRIEF	1864954
03-03-2008 ATRB	03 Mar 2008 10:44:09:207 APPELLANT'S REPLY TO DFDNT'S ANSWER BRIEF	1867440
03-07-2008 RORD	07 Mar 2008 15:33:02:923 RECORD ORDERED	1868609
03-14-2008 ORGR	14 Mar 2008 10:36:37:987 ORIGINAL RECORD - 47 PAGES	1869624
03-14-2008 TRAN	14 Mar 2008 10:36:49:593 TRANSCRIPT 6/21/07 - 7 PAGES	1869625
03-19-2008 TEXT	25 Mar 2008 15:13:01:393 ASSIGNED TO COURT OF CIVIL APPEALS, OKLAHOMA CITY; N/ATTYS *****ASSIGNMENT W/DRAWN PER ORD OF SUP CRT 3-25-08*****	1870448
03-24-2008 TEXT	24 Mar 2008 10:29:02:807 APLEES' MOTION TO STAY CONSIDERATION COA/OKC	1871070
03-25-2008 TEXT	25 Mar 2008 15:11:23:303	1871382

JE: TH/APPEAL IS W/DRAWN FR/ASSIGNMENT T/COA, OKC ETC & REASSIGNED  
T/TH/DOCKET OF TH/SUP CRT. C/ATTYS COA/OKC

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03-26-2008 TEXT	26 Mar 2008 09:04:05:323	1871458
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JE: APLNT MAY RESP TO APLEES' MOT TO STAY ETC NLT 4-15-08. C/ATTYS DC  
CLERK DC JUDGE COA/OKC

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03-27-2008 TEXT	27 Mar 2008 10:05:36:457	1871722
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ORGR RECEIVED FROM CCA-OKC

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03-27-2008 RCCT	27 Mar 2008 10:05:47:003	1871723
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RECORD TO COURT - NP

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04-15-2008 TEXT	15 Apr 2008 11:09:26:863	1874769
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APLNT'S MTN TO STAY CONSIDERATION

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05-28-2008 ASNJ	28 May 2008 11:09:39:457	1882066
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ASSIGNED TO SUPREME COURT

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02-04-2009 TEXT	04 Feb 2009 11:40:11:533	1922429
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APLEES MOTION TO STAY PROCEEDINGS PENDING COMPACT PART 12 DISPUTE-  
RESOLUTION PROCEEDINGS

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02-12-2009 TEXT	12 Feb 2009 10:30:20:827	1923660
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CORRECTIONS TO APPELLEE CHOCTAW NATION'S MOTION TO STAY  
PROCEEDINGS PENDING COMPACT PART 12 DISPUTE-RESOLUTION PROCEEDINGS

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03-03-2009 TEXT	03 Mar 2009 13:30:06:690	1926622
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JE: TH/APLEES' MOT T/STAY ON 2-4-09, ETC, IS DENIED. C/ATTYS DCC DC JUDGE

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06-30-2009 OPIN	30 Jun 2009 11:34:11:440	1945977
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JE: OPINION-----DISMISSAL OF DISTRICT COURT REVERSED AND REMANDED-----  
---PER CURIAM. CONCUR: TAYLOR, VCJ, (BY SEP WRITING), OPALA (BY SEP  
WRITING), WATT, WINCHESTER, COLBERT, JJ. CONCURS IN PART DISSENTS IN  
PART: KAUGER, J, (BY SEP WRITING). DISSENT: EDMONDSON, CJ, HARGRAVE, REIF  
(BY SEP WRITING), JJ. C/ATTYS DC JUDGE PRESS WEST OBJ MDC JR (2009 OK 51)

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06-30-2009 TEXT	30 Jun 2009 11:34:34:650	1945978
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JE: TAYLOR, VCJ, CONCURRING ETC. C/SAME AS OPIN (2009 OK 51)

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06-30-2009 TEXT	30 Jun 2009 11:35:01:290	1945981
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JE: OPALA, J, CONCURRING ETC. C/SAME AS OPIN (2009 OK 51)

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06-30-2009 TEXT	30 Jun 2009 11:35:34:110	1945982
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JE: KAUGER, J, CONCURRING IN PART/DISSENTING IN PART ETC. C/SAME AS OPIN  
(2009 OK 51)

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06-30-2009 TEXT	30 Jun 2009 11:36:03:890	1945983
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JE: REIF, J, W/WHOM EDMONDSON, CJ, JOINS, DISSENTING ETC. C/SAME AS OPIN  
(2009 OK 51)

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06-30-2009 3014	30 Jun 2009 11:36:12:730	1945984
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REVERSED AND REMANDED (OPINION)

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07-20-2009 MAIL	22 Jul 2009 10:01:14:087	1949189
	REHE MAILED DATE	
<hr/>		
07-22-2009 REHE	22 Jul 2009 10:00:59:727	1949188
	APLEES' PETITION FOR REHEARING AND BRIEF IN SUPPORT	
<hr/>		
07-23-2009 TEXT	23 Jul 2009 10:13:44:040	1949388
	DEFENDANTS'/APPELLEES' 9 U.S.C. SEC 2/9 US.C. SEC 3 MOTION TO STAY PROCEEDINGS IN THIS CASE UNTIL ARBITRATION HAS BEEN HAD AS PROVIDED FOR BY PART 12 OF THE COMPACT AND/OR THE JULY 20, 2009 JOINT REFERRAL TO BINDING ARBITRATION OF DISPUTES UNDER AND/OR ARISING FROM THE CHOCTAW NATION OF OKLAHOMA NATION OF OKLAHOMA AND STATE OF OKLAHOMA GAMING COMPACT AND THE CHICKASAW NATION AND STATE OF OKLAHOMA GAMING COMPACT	
<hr/>		
07-24-2009 TEXT	24 Jul 2009 10:39:02:203	1949637
	APLEES' CORRECTION TO PETITION FOR REHEARING AND BRIEF IN SUPPORT	
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08-27-2009 TEXT	27 Aug 2009 10:01:25:847	1954511
	DEFENDANTS'/APPELLEES' MOTION TO HONOR THE ATTACHED AUGUST 25, 2009 ARBITRATION AWARD, DISMISS THIS APPEAL, AND AFFIRM THE DISTRICT COURT OF LEFLORE COUNTY'S JUNE 21, 2007 DISMISAL OF THIS CASE	
<hr/>		
09-02-2009 TEXT	02 Sep 2009 08:50:44:180	1955462
	JE: APLNT T/FILE RESP T/APLEES' REHE & RESP T/MOT T/HONOR ARBITRATION AWARD. BOTH RESPONSES SH/B/FILED B/9-17-09. TIME LIMIT WILL NOT B/EXTENDED. C/ATTYS	
<hr/>		
09-16-2009 TEXT	16 Sep 2009 10:45:02:653	1957650
	PLNTF/APLNT'S REPLY TO DFNDTS/APLEES' ARBITRATIONS AWARD	
<hr/>		
09-16-2009 TEXT	16 Sep 2009 10:47:02:153	1957651
	PLNTF/APLNT'S REPLY TO DFNDTS/APLEES' PETITION FOR REHEARING AND BRIEF IN SUPPORT	
<hr/>		
09-22-2009 TEXT	22 Sep 2009 12:26:51:370	1958770
	DEFENDANTS'/APPELLEES' MOTION FOR LEAVE TO FILE REPLY TO PLAINTIFF/APPELLANT'S RESPONSE TO THE CHOCTAW NATION'S PETITION FOR REHEARING	
<hr/>		
04-12-2010 RHDE	12 Apr 2010 10:29:31:867	1990947
	JE: ETC, APLEES' REHEARING DENIED. APLEES' MOT TITLED "MOT TO HONOR ATTACHED 8-25-09 ARBITRATION AWARD, DSMS APPEAL, AND AFFIRM DIST CT OF LEFLORE COUNTY'S 6-21-07 DSMSL OF CASE" IS DENIED. CONTORVERSY HAS REACHED ITS FINAL JUDICIAL SETTLEMENT AS TO ALL PARTIES; NO FURTHER CHALLENGE TO CT'S OPINS W/BE ENTERTAINED. CONCUR: EDMONDSON, CJ., TAYLOR, VCJ., OPALA, WATT, WINCHESTER, COLBERT, JJ. DISSENT: HARGRAVE, KAUGER AND REIF, JJ. C/ATTYS DC JUDGE	
<hr/>		
04-15-2010 MAND	15 Apr 2010 14:40:20:300	1991805
	MANDATE ISSUED	
<hr/>		

04-20-2010 RCMD 20 Apr 2010 10:31:58:260 1992508

RECEIPT FOR MANDATE

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04-21-2010 TEXT 21 Apr 2010 09:37:10:153 1992690

ORGR RECEIVED FROM COURT

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04-21-2010 RRCD 21 Apr 2010 09:56:21:643 1992692

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# **EXHIBIT 9**



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### IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Danny Dye and Pat Dye, husband & wife,  Plaintiffs/Appellants,  v.  Choctaw Casino of Pocola, Oklahoma and The Choctaw Nation of Oklahoma,  Defendants/Appellees.	<b>No. SD - 104737</b> <b>(Summary Disposition)</b>  Filed: 06/08/2007 Closed: 04/15/2010  Appealed from: LE FLORE County District Court  <b>FOR PUBLICATION</b>  <u>2009 OK 52</u>
--	---

### Parties

Choctaw Casino Of Pocola , Appellee  
Choctaw Nation Of Oklahoma , Appellee  
Dye, Danny , Appellant  
Pye, Pat , Appellee

### Attorneys

#### Attorney

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#### Represented Parties

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Choctaw Casino Of Pocola  
Choctaw Nation Of Oklahoma

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OKLAHOMA CITY, OK 73102

Tawwater, Larry A.(Bar # 8852)  
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OKLAHOMA CITY, OK 73102

Travis, Rex(Bar # 9081)  
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OKC, OK 73101

Travis, Rex(Bar # 9081)  
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OKC, OK 73101

Walker, Daniel W.(Bar # 21055)  
PO BOX 1626

Dye Danny  
Dye Danny

FT SMITH, AR 72902

## Events

Event	Party	Docket	Reporter
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## Lower Court Counts and Other Information

Count	Case Number	Statute	Crime	Special	Sentence	Judge	Reporter
-	CJ-2007-207	-				Knight, Ted A.	

## Docket

Date	Code	Entry Date	Serial #
05-10-2007	DOOA	08 Jun 2007 11:52:15:127	1823777
		DATE OF ORDER APPEALED	
06-08-2007	CASE	08 Jun 2007 10:37:51:377	1823749
		SUMMARY DISPOSITION INITIAL FILING	
06-08-2007	PAY	08 Jun 2007 10:40:01:090	1823750
		RECEIPT # 35792 ON 06/08/2007. DANNY DYE V. CHOCTAW CASINO OF POCOLA, ET AL PAYOR: DANIEL W. WALKER TOTAL AMOUNT PAID: \$ 200.00. LINE ITEMS: \$200.00 ON SUMMARY DISPOSITION INITIAL FILING.	
06-08-2007	PETF	08 Jun 2007 11:52:49:843	1823778
		PETITION IN ERROR (FILED BY WALKER FOR PLNTFS, DYE & DYE)	
06-08-2007	TREC	08 Jun 2007 11:54:03:357	1823779
		APLNT'S REC ON ACC APPEAL (O + 4)	
06-11-2007	TEXT	11 Jun 2007 10:54:15:683	1824014
		APLNTS' MOTION FOR EXTENSION OF TIME	
06-13-2007	TEXT	13 Jun 2007 10:26:08:200	1824522
		APLNTS' MOTION FOR LEAVE TO SUBMIT APPELLATE BRIEFS	
06-27-2007	TEXT	27 Jun 2007 13:02:44:813	1826972
		JE: APLNT IS GRANTED T/7-13-07 T/FILE TH/RECORD. CONSIDERATION IF ANY OF MOT T/FILE BRIEFS IS DEFERRED. N/ATTYS	
06-29-2007	TEXT	29 Jun 2007 10:41:35:387	1827412
		ENTRY OF APPEARANCE BY ROBERT L. RABON	
06-29-2007	RESP	29 Jun 2007 10:42:38:570	1827413
		RESPONSE TO PETITION	
06-29-2007	DSRC	29 Jun 2007 10:44:21:927	1827423
		COUNTER DESIGNATION OF RECORD	

07-05-2007 TEXT	10 Jul 2007 14:48:30:560	1828207
NOTICE OF COMPLETION *****CODE CORRECTED*****		
07-10-2007 TREC	10 Jul 2007 14:48:46:403	1829052
TRANSCRIPT OF HEARING ON MOTION TO DISMISS 5/7/07 - 9 PAGES (O+4)		
07-17-2007 CCAO	17 Jul 2007 11:42:41:247	1830013
ASSIGNED TO COURT OF CIVIL APPEALS, OKLAHOMA CITY; N/OBJ, ATTYS		
08-09-2007 TEXT	09 Aug 2007 08:37:59:163	1834160
JE: ETC. DYES' MOT FOR LEAVE TO SUBMIT APPELLATE BRIEFS IS GRANTED. DYES MAY FILE ATBC ON OR BEFORE 8-27-07. DEFS/APLEES ETC MAY FILE AEAB ON OR BEFORE 9-10-07. DYES MAY FILE ATRB ON OR BEFORE 9-17-07. C/ATTYS COA/OKC		
08-17-2007 ORAG	17 Aug 2007 10:01:24:953	1835513
JE: TH/CASE SET FOR ORAL ARGUMENT, 9-20-07, AT 10:00 AM AT OCU LAW SCHOOL. ARGUMENT WILL BE IN HOMSEY FAMILY MOOT CTROOM IN SARKEYS LAW CENTER, AT NW 23RD AND KENTUCKY, OKC, OK. ARGUMENT WILL BE BEFORE COA/OKC, DIV 1, CONSISTING OF HANSEN, PJ, BUETTNER, J AND BELL, J. EACH SIDE WILL BE ALLOTTED 20 MINS FOR ARGUMENT. APLNTS MAY RESERVE PORTION OF TIME FOR REBUTTAL. ETC. NO MORE THAN 2 ATTYS MAY PRESENT ARGUMENT FOR EACH SIDE. COUNSEL INTENDING TO USE PHISICAL EXHS OR ELECTRONIC PRESENTATIONS MUST MAKE APP ARRANGEMENTS FOR TH/PRESENTATIONS BEFORE ARGUMENT. C/ATTYS DC JUDGE DEAN HELLMAN COA/OKC		
08-27-2007 ATBC	27 Aug 2007 09:57:49:790	1837204
APLNTS BRIEF-IN-CHIEF COA/OKC		
09-10-2007 AEAB	10 Sep 2007 09:44:51:097	1839247
BRIEF OF APLEES COA/OKC		
09-10-2007 TEXT	10 Sep 2007 09:44:58:347	1839248
APLEES' APPENDIX COA/OKC		
09-17-2007 TEXT	17 Sep 2007 16:07:30:363	1840652
APLNTS' MOTION TO ASSOCIATE COUNSEL-JAMES M. DUNN COA/OKC		
09-17-2007 ATRB	17 Sep 2007 16:10:14:747	1840655
APLNTS' REPLY BRIEF COA/OKC		
10-25-2007 COPN	25 Oct 2007 09:16:32:863	1847169
JE: OPINION-----REVERSED AND REMANDED FOR TRIAL-----BUETTNER, J. CONCUR: HANSEN, PJ, BELL, J*****SUMMARY(FOR PUB)*****C/ATTYS DC JUDGE		
10-25-2007 3014	25 Oct 2007 09:16:48:567	1847170
REVERSED AND REMANDED (OPINION)		
11-14-2007 MAIL	15 Nov 2007 15:38:35:507	1850961
PETITION MAILED DATE		
11-15-2007 CREH	15 Nov 2007 15:38:19:477	1850960

APLEES' PET FOR REHE & BRIEF I/SUPP COA/OKC

11-20-2007 TEXT	20 Nov 2007 08:50:03:843	1851466
	JE: ETC. APLNTS TO RESP TO PET FOR REHE ON OR BEFORE 12-10-07. C/ATTYS COA/OKC	
12-07-2007 TEXT	07 Dec 2007 12:20:04:907	1854385
	RESP TO APLEES' PET FOR REHE & BRIEF I/SUPP COA/OKC	
12-14-2007 CRHD	14 Dec 2007 08:25:37:130	1855250
	JE: OPIN FILED 10-25-07, SH/BE CORR IN FOLLOWING MANNER. (SEE ORDER TH/DATE) DEFS/APLEES' PET FOR REHE IS DENIED. C/ATTYS OBJ COA/OKC*****ADD TO MANDATE*****	
12-14-2007 TEXT	14 Dec 2007 13:23:16:680	1855419
	APLEES' MOTION FOR LEAVE TO FILE RESPONSE TO APLNTS' RESPONSE TO APLEES' PETITION FOR REHEARING COA/OKC	
12-27-2007 TEXT	27 Dec 2007 11:05:46:837	1856997
	ENTRY OF APPEARANCE OF ARROW FOR APLEES CHOCTAW CASINO OF POCOLA OK & CHOCTAW NATION OF OK COA/OKC	
12-27-2007 TEXT	03 Jan 2008 08:21:42:310	1856998
	APLEES' MOTION FOR PERMISSION TO ENTER AN APPEARANCE-ARROW COA/OKC *****ENTRY CORRECTED*****	
01-02-2008 MAIL	04 Jan 2008 11:19:45:010	1857920
	PETITION MAILED DATE	
01-04-2008 TEXT	04 Jan 2008 11:18:58:667	1857918
	APLEES' MOTION TO ASSOCIATE COUNSEL-DENNIS W. ARROW COA/OKC	
01-04-2008 CERT	04 Jan 2008 11:19:35:527	1857919
	APLEES' PET FOR WRIT OF CERT (\$/MAIL) COA/OKC	
01-07-2008 TEXT	07 Jan 2008 11:18:16:123	1858119
	THE CHICKASAW NATION'S MOTION FOR LEAVE TO PARTICIPATE AS AMICUS CURIAE IN SUPPORT OF PETNR-HARTLEY-KELSO, GEE, GREEN, GREETHAM	
01-09-2008 TEXT	09 Jan 2008 14:07:43:440	1858720
	JE: APPL OF D. ARROW TO APPEAR PRO HAC VICE ETC IS GRANTED. ETC. APPL OF AMICUS CURIAE CHICKASAW NATION TO FILE STATEMENT IN SUPP OF PET FOR CERT IS GRANTED. STATEMENT, NOT TO EXCEED 10 PAGES, SH/BE FILED W/IN 10 DAYS OF DATE OF TH/ORDER. APLNTS MAY FILE RESP TO AMICUS W/IN 15 DAYS OF DATE TH/THE STATEMENT IS FILED. ETC. N/ATTYS	
01-11-2008 CERA	11 Jan 2008 11:57:08:770	1859107
	ANSWER TO DFDNT/APLEES' PET FOR WRIT OF CERT	
01-15-2008 TEXT	15 Jan 2008 15:49:27:727	1859629
	APPL OF THE CHEROKEE NATION AND CHEROKEE NATION BUSINESSES, LLC FOR LEAVE TO FILE AMICI CURIAE STATEMENT OF POSITION IN SUPPORT OF PET FOR	

CERT-LUTHEY AND HAMMONS

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01-16-2008 TEXT	16 Jan 2008 11:10:35:613	1859714
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JE: TH/APPL OF AMICUS CURIAE CHEROKEE NATION T/FILE A STATEMENT IN SUPPORT OF TH/PET F/CERT IS GRANTED. TH/STATEMENT, NOT T/EXCEED 10 PGS, SH/B/FILED W/I 10 DAYS OF TH/DATE OF TH/ORDER. APLNTS M/FILE A RESPONSE ETC W/I 15 DAYS OF TH/DATE TH/TH/STATEMENT IS FILED. ETC. N/ATTYS

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01-17-2008 TEXT	17 Jan 2008 14:27:15:403	1859983
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STATEMENT OF POSITION IN SUPPORT OF POSITION FOR CERT-CHEROKEE NATION

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01-22-2008 TEXT	22 Jan 2008 14:20:54:260	1860617
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AMICUS CURIAE STATEMENT IN SUPPORT OF CHOCTAW NATION'S PETITION FOR WRIT OF CERT

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01-22-2008 CERR	22 Jan 2008 14:22:03:353	1860620
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REPLY TO ANSWER TO PETITION FOR WRIT OF CERT

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01-24-2008 TEXT	24 Jan 2008 10:04:53:077	1861101
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RESPONSE TO THE CHEROKEE NATION'S STATEMENT OF POSITION IN SUPPORT OF POSITION OF CERT

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01-24-2008 TEXT	24 Jan 2008 15:40:14:943	1861250
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ENTRY OF APPEARANCE BY REX TRAVIS

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01-24-2008 TEXT	24 Jan 2008 15:41:53:347	1861251
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APPL TO FILE AMICUS CURIAE BRIEF-OKLA ASSOC FOR JUSTICE (TAWWATER, TAWWATER, TRAVIS AND KOURI)

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01-25-2008 TEXT	25 Jan 2008 11:37:14:300	1861372
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JE: APPL OF AMICUS CURIAE OKLA ASSOC FOR JUSTICE TO FILE STATEMENT IN OPPOSITION TO PET FOR CERT IS GRANTED. STATEMENT, NOT TO EXCEED 10 PAGES, SH/BE FILED W/IN 10 DAYS OF DATE OF TH/ORDER. APLEES MAY FILE RESP TO STATEMENT W/IN 15 DAYS OF DATE TH/TH STATEMENT IS FILED. ETC. N/ATTYS

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02-01-2008 TEXT	01 Feb 2008 10:16:12:817	1862354
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RESPONSE TO THE CHICKASAW NATION'S AMICUS CURIAE STATEMENT IN SUPPORT OF CHOCTAW NATION'S PETITION FOR WRIT OF CERT

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02-04-2008 TEXT	04 Feb 2008 16:10:47:883	1862697
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OKLA ASSOC FOR JUSTICES'S MOTION TO EXTEND TIME

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02-05-2008 TEXT	05 Feb 2008 13:48:48:083	1862812
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JE: OK ASSOC FOR JUST'S MTN FOR EXTN OF TIME GRANTED. STATEMENT M/BE FILED NLT 2-8-08. N/ATTYS

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02-08-2008 TEXT	08 Feb 2008 15:59:47:813	1863602
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STATEMENT IN OPPOSITION TO THE PETITION FOR CERT BY THE OKLAHOMA ASSOCIATION FOR JUSTICE

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02-13-2008 TEXT	13 Feb 2008 16:31:44:583	1864327
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RESP OF PETNR CHOCTAW NATION & CHOCTAW CASINO OF POCOLA TO  
 STATEMENT OF OK ASSOC FOR JUSTICE IN OPPOSITION TO PET FOR CERT

02-19-2008 TEXT	19 Feb 2008 16:28:51:853	1865176	APLEES' NOTICE OF SUPPLEMENTAL AUTHORITY
02-25-2008 TEXT	25 Feb 2008 11:28:33:583	1866031	TREC RECEIVED FROM CCA-OKC
02-27-2008 TEXT	27 Feb 2008 15:43:07:403	1866733	MTN TO STRIKE APLEES' NOTICE OF SUPP AUTH
02-29-2008 TEXT	29 Feb 2008 13:54:39:003	1867177	RESP TO APLNTS' MTN TO STRIKE NOTICE OF SUPP AUTH
03-03-2008 CTGR	03 Mar 2008 11:34:23:560	1867495	JE: APLEE'S PET FOR CERT IS GRANTED. CAUSE STANDS SBMTD ON BRIEFS ALREADY FILED, UNLESS OTHERWISE ORDERED BY CT. ETC. C/ATTYS DC JUDGE COA/OKC
03-04-2008 RCCT	04 Mar 2008 11:11:43:450	1867756	RECORD TO COURT - CERT
03-06-2008 TEXT	06 Mar 2008 13:34:57:490	1868294	JE: MOT TO STRIKE APLEES' NOTICE OF SUPP AUTHORITY DFRD FOR CONSIDERATION W/MERITS OF APPEAL. N/ATTYS
03-14-2008 TEXT	14 Mar 2008 16:03:53:467	1869831	APPLIC FOR LEAVE TO FILE AN AMICUS CURIAE (OF ATTYS NORMAN, KICKINGBIRD & COWAN FOR APPLICANTS)
03-25-2008 TEXT	25 Mar 2008 16:45:06:057	1871365	JE: ETC. EVEN THOUGH TH/CT H/ALREADY ORDERED CERT REV, COMANCHE NATION GAM CORP & SAC & FOX NATION BUS ENT M/FILE JNT STATEMENT, NOT T/EXCEED 10 PGS, I/SUPP OF DFDNT/APLEES ON CERT W/IN 10 DAYS FR/FILING OF TH/ORDER. PLNTF/APLNTS M/FILE A RESP, NOT T/EXCEED 10 PGS, T/AMICI CURIAE STATEMENT W/IN 15 DAYS AFTER STATEMENT'S FILED. C/ATTYS
04-04-2008 TEXT	04 Apr 2008 14:44:02:113	1873221	BRIEF OF COMANCHE NATION GAMING CORPORATION AND SAC AND FOX NATION BUSINESS ENTERPRISES, INC., AS AMICI CURIAE IN SUPPORT OF PETRS
04-14-2008 TEXT	14 Apr 2008 10:25:13:440	1874401	RESP TO COM NAT GAMING CORP & SAC & FOX BUS ENT'S AMICUS CURIAE IN SUPP OF CHOC NATION'S PET FOR WRIT OF CERT
05-02-2008 TEXT	02 May 2008 15:48:05:360	1878036	MTN FOR LEAVE TO SUPP BRIEF OF AMICI CURIAE
05-07-2008 TEXT	07 May 2008 09:55:10:270	1878524	APLNTS' COMBINED MOTION TO STRIKE AND RESPONSE TO AMICI CURIAE, COMANCHE NATION GAMING CORPORATION AND SAC AND FOX NATION BUSINESS

ENTERPRISES, INC.'S MOTION FOR LEAVE TO SUPPLEMENT BRIEF OF AMICI CURIAE

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05-12-2008 TEXT 12 May 2008 13:09:14:500 1879342  
 JE: TH/MOT F/LEAVE T/SUPP TH/AMICI CURIAE STATEMENT IN SUPPORT OF APLEES' PET F/CERT REVIEW ETC, B/TH/COMANCHE NATION GAMING COMM & SAC & FOX NATION BUS ENTERPRISES, INC. IS DENIED. C/ATTYS

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05-13-2008 TEXT 27 May 2008 14:04:02:723 1879620  
 NOTICE OF SUPPLEMENTAL AUTHORITY\*\*\*\*\*STRICKEN PER ORDER OF 5-27-08\*\*\*\*\*

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05-15-2008 TEXT 15 May 2008 13:51:03:037 1879988  
 ENTRY OF APPEARANCE OF MEACHAM AS COUNSEL PRO SE

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05-15-2008 TEXT 27 May 2008 14:03:37:193 1879989  
 APPLICATION OF SCOTT MEACHAM, TREASURER OF OKLAHOMA AND LEAD STATE NEGOTIATOR FOR OKLAHOMA'S 2004 MODEL TRIBAL GAMING COMPACT, FOR LEAVE TO FILE STATEMENT \*\*\*\*\*TYPO\*\*\*\*\*ATTACHED STATEMENT STRICKEN PER ORDER OF 5-27-08\*\*\*\*\*

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05-19-2008 TEXT 19 May 2008 13:22:24:813 1880563  
 MTN TO STRIKE CHOCTAW CASINO OF POCOLA & CHOCTAW NATION OF OKLA'S NOTICE OF SUPP AUTHORITY

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05-20-2008 TEXT 20 May 2008 14:04:50:377 1880754  
 APLNTS' COMBINED MTN TO STRIKE & RESP TO MEACHAM'S APPLICC FOR LEAVE T/FILE STATEMENT

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05-23-2008 TEXT 23 May 2008 14:03:47:563 1881567  
 RESP OF APLEES CHOCTAW NATION AND CHOCTAW CASINO OF POCOLA TO APLNTS' MOTION TO STRIKE APLEES' 5-13-08 NOTICE OF SUPPLEMENTAL AUTHORITY

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05-27-2008 TEXT 27 May 2008 14:05:30:003 1881871  
 JE: OKLA ST/TREASURER'S APPL FOR LEAVE TO FILE ATTACHED STATEMENT ETC IS DENIED, AND STATEMENT IS STRICKEN. C/ATTYS

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05-27-2008 TEXT 27 May 2008 14:06:18:943 1881874  
 JE: APLEES "NOTICE OF SUPP AUTHORITY" ETC IS STRICKEN. C/ATTYS

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07-17-2008 TEXT 24 Jul 2008 14:43:02:527 1890901  
 MTN FOR LEAVE T/FILE ELECTRONICALLY-UNCORRUPTED TEXT OF RESP OF APLEES CHOCTAW NATION & CHOCTAW CASINO OF POCOLA TO APLNTS' MTN TO STRIKE APLEES' 5-13-08 NOTICE OF SUPP AUTH \*\*\*\*\*ATTACHMENT STRICKEN\*\*\*\*\*

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07-22-2008 TEXT 22 Jul 2008 10:51:01:120 1891635  
 RESP OF CHOC NATION'S MTN FOR LEAVE TO FILE ELECTRONICALLY-UNCORRUPTED TEST OF RESP OF APLEES CHOC NAT & CHOC CASINO OF POCOLA, ETC.

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07-24-2008 TEXT 24 Jul 2008 14:38:07:987 1892257  
 JE: APLEES FILED A MOT ON 7-17-08, REQ LEAVE T/FILE A CORRECTED COPY OF TH/RESP FILED 5-23-08, ETC. ACCORDINGLY, APLEES' MOT FILED 7-17-08 IS DENIED

& TH/RESP ATTACHED T/TH/MOT IS STRICKEN. C/ATTYS

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02-04-2009 TEXT 04 Feb 2009 11:39:16:993 1922426  
APLEES MOTION TO STAY PROCEEDINGS PENDING COMPACT PART 12 DISPUTE-  
RESOLUTION PROCEEDINGS

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02-09-2009 TEXT 09 Feb 2009 12:14:47:193 1923113  
CORRECTIONS TO APPELLEE CHOCTAW NATION'S MOTION TO STAY  
PROCEEDINGS PENDING COMPACT PART 12 DISPUTE-RESOLUTION PROCEEDINGS

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02-12-2009 TEXT 12 Feb 2009 10:26:10:767 1923657  
RESPONSE TO CHOCTAW NATION'S MOTION TO STAY PROCEEDINGS PENDING  
COMPACT PART 12 DISPUTE-RESOLUTION PROCEEDINGS

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02-24-2009 TEXT 24 Feb 2009 11:49:29:593 1925225  
REPLY OF APPELLEE CHOCTAW NATION TO APPELLANTS' RESPONSE TO MOTION  
TO STAY PROCEEDINGS PENDING COMPACT PART 12 DISPUTE-RESOLUTION  
PROCEEDINGS

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02-27-2009 TEXT 27 Feb 2009 10:27:03:930 1926004  
PLAINTIFFS' MOTION TO STRIKE REPLY OF APPELLEE CHOCTAW NATION TO  
APPELLANTS' RESPONSE TO MOTION TO STAY PROCEEDINGS PENDING COMPACT  
PART 12 DISPUTE-RESOLUTION PROCEEDINGS

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03-03-2009 TEXT 03 Mar 2009 13:21:26:640 1926618  
JE: TH/APLEES' MOT T/STAY FILED ON 2-4-09, ETC, IS DENIED. TH/APLNTS' MOT  
T/STRIKE FILED ON 2-27-09, IS DENIED. C/ATTYS DCC DC JUDGE

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06-30-2009 OPIN 01 Jul 2009 09:43:13:533 1945965  
JE: OPINION-----COA/OKC OPINION VACATED; DISMISSAL OF DISTRICT COURT  
REVERSED AND REMANDED-----PER CURIAM. CONCUR: TAYLOR, VCJ, OPALA,  
WATT, WINCHESTER, COLBERT, JJ. CONCURS IN PART AND DISSENTS IN PART:  
KAUGER, J, (BY SEP WRITING). DISSENT: EDMONDSON, CJ, HARGRAVE, REIF (BY  
SEP WRITING), JJ. C/ATTYS DC JUDGE COA/OKC PRESS WEST OBJ MDC JR (2009 OK  
52)\*\*\*TYPO\*\*\*

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06-30-2009 TEXT 30 Jun 2009 11:18:12:450 1945966  
JE: KAUGER, J, CONCURRING IN PART/DISSENTING IN PART ETC. C/SAME AS OPIN  
(2009 OK 52)

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06-30-2009 TEXT 30 Jun 2009 11:18:45:050 1945967  
JE: REIF, J, W/WHOM EDMONDSON, CJ, JOINS, DISSENTING ETC. C/SAME AS OPIN  
(2009 OK 52)

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06-30-2009 3014 30 Jun 2009 11:18:57:140 1945968  
REVERSED AND REMANDED (OPINION)

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07-20-2009 REHE 20 Jul 2009 16:15:17:567 1948840  
APLEES' PETITION FOR REHEARING AND BRIEF IN SUPPORT (OC)

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07-21-2009 TEXT 21 Jul 2009 08:10:04:550 1948853  
DEFS'/APLEES' USC SEC 2/9 USC SEC 3 MOTION TO STAY PROCEEDINGS IN THIS  
CASE UNTIL ARBITRATION HAS BEEN HAS AS PROVIDED BY PART 12 OF THE

COMPACT AND/OR THE 7-20-09 JOINT REFERRAL TO BINDING ARBITRATION OF DISPUTES UNDER AND/OR ARISING FROM THE CHOCTAW NATION OF OKLAHOMA AND STATE OF OKLAHOMA GAMING COMPACT AND THE CHICKASAW NATION AND STATE OF OKLAHOMA GAMING COMPACT

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08-04-2009 TEXT	04 Aug 2009 10:49:53:097	1951057
	PLNTFS'/APLNTS' RESPONSE TO DFNDTS'/APLEES' 9 USC § 3 MOTION TO STAY PROCEEDINGS IN THIS CASE UNTIL ARBITRATION HAD BEEN HAD AS PROVIDED FOR BY PART 12 OF THE COMPACT AND/OR THE JULY 20, 2009 JOINT REFERRAL TO BINDING ARBITRATION OF DISPUTES UNDER AND/OR ARISING FROM THE CHOCTAW NATION OF OKLAHOMA AND STATE OF OKLAHOMA GAMING COMPACT AND THE CHICKASAW NATION AND STATE OF OKLAHOMA GAMING COMPACT	
08-10-2009 TEXT	10 Aug 2009 10:47:39:877	1951713
	DFNDTS'/APLEES' OKLAHOMA SUPREME COURT RULE 1.6/RULE 1.11(K) MOTION TO STRIKE PLNTFS'/APLNTS' RESPONSE TO DFNDTS'/APLEES' 9 USC SEC 2/9 USC SEC 3 MOTION TO STAY PROCEEDINGS [PENDING] ARBITRATION	
08-13-2009 TEXT	13 Aug 2009 10:27:57:107	1952295
	PLNTFS'/APLNTS' RESPONSE TO THE DFNDTS'/APLEES' OKLAHOMA SUPREME COURT RULE 1.6/RULE 1/11(K) MOTION TO STRIKE PLNTFS'/APLNTS' RESPONSE TO DFNDTS'/APLEES' 9 U.S.C. SEC. 2/9 U.S.C. SEC. 3 MOTION TO STAY PROCEEDINGS [PENDING] ARBITRATION	
08-26-2009 TEXT	26 Aug 2009 13:13:35:673	1954369
	DFNDTS'/APLEES' MOTION TO HONOR THE ATTACHED AUGUST 25, 2009 ARBITRATION AWARD, DISMISS THIS APPEAL, AND AFFIRM THE DISTRICT COURT OF LEFLORE COUNTY'S MAY 10, 2007 DISMISSAL OF THIS CASE	
09-02-2009 TEXT	02 Sep 2009 08:50:26:320	1955463
	JE: APLNT T/FILE RESP T/APLEES' REHE & RESP T/MOT T/HONOR ARBITRATION AWARD. BOTH RESPONSES SH/B/FILED B/9-17-09. TIME LIMIT WILL NOT B/EXTENDED. C/ATTYS	
09-16-2009 TEXT	16 Sep 2009 09:47:20:213	1957590
	PLNTFS'/APLNTS' RESPONSE TO THE DFNDTS'/APLEES' MOTION TO HONOR THE ATTACHED AUGUST 25, 2009 ARBITRATION AWARD, DISMISS THIS APPEAL, AND AFFIRM THE DISTRICT COURT OF LEFLORE COUNTY'S MAY 20, 2007 DISMISSAL OF THIS CASE	
09-16-2009 TEXT	16 Sep 2009 09:47:58:023	1957591
	PLAINTIFFS'/APPELLANTS' RESPONSE TO THE DEFENDANTS'/APPELLEES' PETITION FOR REHEARING AND BRIEF IN SUPPORT	
09-21-2009 TEXT	21 Sep 2009 13:32:19:790	1958455
	DFNDTS'/APLEES' RULE 1.6, RULE 11.1(K), AND SEPTEMBER 2 ORDER-BASED MOTION TO STRIKE PLNTFS'/APLNTS' RESPONSE TO THE CHOCTAW NATION'S MOTION TO HONOR THE ARBITRATION AWARD	
09-23-2009 TEXT	23 Sep 2009 15:01:02:580	1959105
	DFNDTS'/APLEES' RULE 1.6/RULE 1.11(K) MOTION TO STRIKE PLNTFS'/APLNTS' RESPONSE TO THE CHOCTAW NATION'S PETITION FOR REHEARING	
09-24-2009 TEXT	24 Sep 2009 13:02:42:537	1959265

CORRECTIONS TO DFNDTS'/APLEES' RULE 1.6/RULE 1.11(K) MOTION TO STRIKE  
PLNTFS'/APLNTS' RESPONSE TO THE CHOCTAW NATION'S PETITION FOR  
REHEARING

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09-30-2009 TEXT	30 Sep 2009 09:47:58:700	1960115
PLNTFS'/APLNTS' RESPONSE TO THE DFNDTS'/APLEES' RULE 1.6, RULE 1.11(K), AND SEPTEMBER 2 ORDER-BASED MOTION TO STRIKE PLNTFS'/APLNTS' RESPONSE TO THE CHOCTAW NATION'S MOTION TO HONOR ARBITRATION AWARD		
09-30-2009 TEXT	30 Sep 2009 09:51:36:580	1960116
PLNTFS'/APLNTS' MOTION TO STRIKE THE DFNDTS'/APLEES' RULE 1.6/RULE 1.11(K) MOTION TO STRIKE PLNTFS'/APLNTS' RESPONSE TO THE CHOCTAW NATION'S PETITION FOR REHEARING OR, ALTERNATIVELY, PLNTFS'/APLNTS' RESPONSE TO SAME		
10-09-2009 TEXT	09 Oct 2009 16:36:51:753	1961759
DEFENDANTS'/APPELLEES' RESPONSE TO PLAINTIFFS'/APPELLANTS' MOTION TO STRIKE DEFENDANTS'/APPELLEES' RULE 1.6 / RULE 1.11(K) MOTION TO STRIKE PLAINTIFFS' APPELLANTS' RESPONSE TO THE CHOCTAW NATION'S PETITION FOR REHEARING		
04-12-2010 RHDE	12 Apr 2010 10:29:38:147	1990946
JE: ETC APLEES' REHE DENIED. APLEES' MOT TITLED "MOT TO HONOR ATTCHD ETC, DISM APPEAL, AFFIRM DIST CT DSML ETC" DENIED. CONTOVERSY HAS REACHED FINAL JUD SETTLEMENT AS TO ALL PARTIES; NO FURTHER CHALLENGE TO CT'S OPINS WILL BE ENTERTAINED. CONCUR-EDMONDSON, CJ, TAYLOR, VCJ, OPALA, WATT, WINCHESTER, COLBERT, JJ. DISSENT-HARGRAVE, KAUGER, REIF, JJ. C/ATTYS DC JUDGE		
04-15-2010 MAND	15 Apr 2010 14:39:49:880	1991804
MANDATE ISSUED		
04-20-2010 RCMD	20 Apr 2010 10:41:56:350	1992528
RECEIPT FOR MANDATE		
04-21-2010 TEXT	21 Apr 2010 09:35:46:913	1992689
TREC RECEIVED FROM COURT		

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End of Transmission.

# **EXHIBIT 10**

**TIN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

1) EASTERN SHAWNEE TRIBE OF  
OKLAHOMA,

Plaintiff,

v.

1) STATE OF OKLAHOMA,

Defendant.

Case No. 5:10-cv-00459-W

**DECLARATION OF GLENNA J. WALLACE**

1. I am Glenna J. Wallace, a citizen of the Eastern Shawnee Tribe of Oklahoma ("Tribe"). Pursuant to the CONSTITUTION OF THE EASTERN SHAWNEE TRIBE OF OKLAHOMA, approved November 7, 1939, and as amended and approved June 17, 1999, I serve as the Chief of the Tribe.

2. Pursuant to Art. 6, § 2, I serve as the Chief Executive Officer of the Tribe's government presiding over the General Council, overseeing the implementation of all laws, ordinances, resolutions and rules made by the Business Committee (the Tribe's Legislative branch) and I report to the Business Committee concerning the affairs of the Eastern Shawnee Tribe and make recommendations to assist in governing the Eastern Shawnee Tribe. I supervise and direct the Executive Department of the Tribe's government.

3. Prior to becoming Chief I served on the legislative branch of the Tribe's government, the Business Committee, from on or about 1988 in various positions until 2006 (except for one year, *i.e.*, 1996). During the last eight years I

have served as Secretary for the Tribe's Business Committee recording all minutes, transactions and resolutions.

4. In 2006 the citizens of the Tribe elected me as Chief to a four-year term concluding in September 2010. I served as a Professor of English at Crowder College in Neosho, Missouri for 38-1/2 years and was still in that position when elected Chief and resigned at the end of the Fall 2006 semester. During my tenure I served in various capacities including instructor, Division Chair of Communication, Fine Arts and Design, the Director of the General Equivalency Diploma Program and developed scholarships and wrote grants to fund this program and I served as interim Academic Dean and Director of International Travel for the college.

5. On November 8, 2004, the Tribe accepted Oklahoma's offer in 3A O.S. (2009 Supp.), §280 to enter into the Model Tribal Gaming Compact. Ex. 1 attached to the Tribe's Motion for Summary Judgment is a true and correct copy of the Compact, bearing signatures of our Tribe's Chief at the time, and the Governor of Oklahoma. Also attached to Ex. 1 are true and correct copies of the Department of Interior's approval of the Compact, by federal register publication and subsequent letter to the chief executive officers of the Tribe and Oklahoma.

6. Ex. 2 attached to the Tribe's Motion for Summary Judgment is a true and correct copy of the April 5, 2010 Arbitration Award of the Hon. Layn R. Phillips, as Sole Arbitrator *In the Matter of the Joint Referral to Binding Arbitration*

*by the Eastern Shawnee Tribe of Oklahoma and the State of Oklahoma of Dispute Arising Under Tribal Gaming Compact.*

7. Ex. 3 attached to the Tribe's Motion for Summary Judgment is a true and correct copy of the Resolution of Dispute Arising Under the State-Tribal Gaming Compact Between the State of Oklahoma and the Eastern Shawnee Tribe of Oklahoma.

8. The Tribe has established and operates two casino facilities with Class III games pursuant to the Compact. Our tribal government derives approximately ninety percent (90%) of our annual revenues from gaming within these facilities pursuant to the Indian Gaming Regulatory Act, codified at 25 U.S.C. § 2701 et. seq., and depends on these revenues to fund various authorized governmental programs to serve the needs of our citizens.

9. On August 21, 2009, a tort claimant sued the Tribe in *Crocker v. Eastern Shawnee Tribe and Bordertown Casino & Bingo*, No. CJ-09-485 (Ottawa County, Oklahoma) seeking damages for injuries allegedly sustained at the Tribe's casino covered by Part 6 of the Compact. The Tribe made a special entry of appearance and filed a motion to dismiss based on immunity and lack of jurisdiction. On January 8, 2010 the state district court denied the Tribe's motion to dismiss but agreed to certify the matter for interlocutory appeal to the Oklahoma Supreme Court. Although the Tribe furnished the court with the August 25, 2009 arbitration decision referred to above (applicable to the Chickasaw and Choctaw Nations' identical compact), the state district court judge

cited Cossey as binding authority, and stated to the parties (after instructing the court reporter not to begin recording yet):

"I do not care what the Governor says, I do not care what an arbitrator says, I do not care what a federal court says, I only answer to the Oklahoma Supreme Court—they are my boss."

10. Part 12(1) provides procedures for the Tribe and Oklahoma to attempt to resolve a dispute under the Compact by agreement. On January 22, 2010, the Tribe's lawyers and I met with Oklahoma's Governor's office including Governor Henry's General Counsel and the State Treasurer, to discuss and attempt to resolve the jurisdictional disputes arising under the Compact. That meeting resulted in an agreement signed by me on January 27, 2010 and by the Governor of Oklahoma on February 8, 2010, respectively, that resolved the dispute.


11. In view of the Oklahoma Supreme Court's prior refusal to consider the declarations of the Governor and State Treasurer of Oklahoma as to the parties' intent with respect to Oklahoma's jurisdiction over tort claims in *Cossey v. Cherokee Nation Enterprises, LLC*, 2009 OK 9, 212 P.3d 447, *Griffith v. Choctaw Casino of Pocola*, 2009 OK 51, and *Dye v. Choctaw Casino of Pocola*, 2009 OK 52, the Tribe determined to also invoke the arbitration clause under Part 12(2) of the Compact as an alternate resolution procedure. We did this to protect our government and to enforce the understanding of the parties in the Compact.

12. On March 1, 2010 the Tribe and Oklahoma jointly referred the dispute to binding arbitration. Ex. 5 to the Tribe's Motion for Summary Judgment is a true and correct copy of the parties' Joint Referral to Arbitration. In the parties' Joint Referral, the Tribe and Oklahoma appointed the Hon. Layn R. Phillips, formerly Judge of the United States District Court for the Western District of Oklahoma, as the sole Arbitrator. In the arbitration the Tribe relied both on the Resolution it had reached with the State under Part 12(1) of the Compact, and proper interpretation of the Compact itself under controlling federal and Oklahoma law.

13. The Tribe believes, based on the Oklahoma state court decisions cited in the Motion for Summary Judgment, the Oklahoma Supreme Court's refusals to recognize an arbitration award governing the Chickasaw and Choctaw Nations, and the remarks made by the state district judge in the *Crocker* case quoted above, that it is threatened with continuing violations of its sovereign immunity and the Compact, absent an expeditious resolution of this controversy, by being subjected to suits in Oklahoma state courts asserting tort and prize claims falling within Part 6 of the Compact.

I declare under penalty of perjury under federal law, 28 U.S.C. §1746, that the foregoing is true and correct.

Executed on May 11, 2010.

  
Glenna J. Wallace

# **EXHIBIT 11**

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

1) EASTERN SHAWNEE TRIBE OF  
OKLAHOMA,

Plaintiff,

v.

1) STATE OF OKLAHOMA,

Defendant.

Case No. 5:10-cv-00459-W

**DECLARATION OF D. MICHAEL MCBRIDE III**

1. I am D. Michael McBride III, a director and shareholder of Crowe & Dunlevy in the Tulsa office.

2. Crowe & Dunlevy is legal counsel to the Eastern Shawnee Tribe of Oklahoma ("Tribe").

3. Crowe & Dunlevy represents the Tribe in an action styled *Crocker v. Eastern Shawnee Tribe and Bordertown Casino and Bingo*, Case No. CJ-09-45, filed in Ottawa County, State of Oklahoma District Court on August 21, 2009. In *Crocker*, the plaintiff asserts a tort claim for injuries alleged to have occurred at the Tribe's gaming facility, the Bordertown Casino & Bingo, which was established under a tribal gaming compact between the Tribe and Oklahoma, pursuant to 3A O.S. (2009 Supp.), §§280 and 281, as authorized by the Indian Gaming Regulatory Act, 26 U.S.C. §§2701 et seq. and under which the Tribe continues to engage in Class III gaming within its Indian country since adopting the Compact.

4. On October 1, 2009 the Tribe filed a Motion to Dismiss in the *Crocker* case based upon sovereign immunity and lack of jurisdiction.

5. The District Court held a hearing on January 8, 2010 and without a written order, denied the Tribe's Motion to Dismiss but agreed to certify the matter for interlocutory appeal to the Oklahoma Supreme Court.

6. In open court, the District Judge explained his ruling by stating (after instructing the court reporter not to begin recording yet) that he believes that *Cossey v. Cherokee Nation Enterprises, LLC*, 2009 OK 9, 212 P.3<sup>rd</sup> 447 is binding authority upon the district court, and that:

“Gentlemen, let’s not waste time here. I do not care what the Governor says, I do not care what an arbitrator says, I do not care what a federal court says, I only answer to the Oklahoma Supreme Court – they are my boss.”

7. Since that time the Tribe has filed several successive motions to dismiss based upon (i) entering into an agreement with the State of Oklahoma dated February 11, 2010 resolving the dispute regarding jurisdiction pursuant to dispute resolution procedures under Part 12(1) of the Compact; and (ii) an arbitration award in the Tribe’s favor rendered by Judge Layn Phillips on April 5, 2010, pursuant to dispute resolution procedures under Part 12(2) of the Compact.

8. As of this date, the district court has not ruled on the subsequent motions to dismiss in this case.

9. Another claimant asserting a tort claim arising under Part 6 of the Compact similarly sued the Tribe, in *Harrington v. Eastern Shawnee Tribe of Oklahoma Foundation, Inc., Glenna Wallace, Chief of the Eastern Shawnee Tribe of Oklahoma Tribe (sic); Eastern Shawnee Tribe of Oklahoma, Bordertown(sic) Bingo & Casino, John Doe or Any Entity That Has Operational Duty to the Eastern Shawnee Tribe of Oklahoma or Eastern Shawnee Tribe of Oklahoma Foundation, Inc.*, No. CJ-08-313. The Plaintiff there sued the Tribe and its related entities and leader in Ottawa County, State of Oklahoma for a Class III gaming-related tort dispute arising on the Tribe's Indian country. On January 26, 2009, the District Court denied the Tribe's Motion to Dismiss based on sovereign immunity and jurisdiction shortly after the Oklahoma Supreme Court rendered its decision in *Cossey v. Cherokee Nation Enterprises, LLC*, 2009 OK 6, (Jan. 20, 2009).

10. Upon information and belief, other Oklahoma state district courts besides Ottawa County, including courts in Bryan, Comanche, LeFlore, Osage, Pittsburg, Rogers and Tulsa Counties, in at least *fourteen* cases have also purported to exercise jurisdiction over other Oklahoma Indian tribal governments in Compact-based, Indian country-arising tort lawsuits, in violation of those tribes' "Class III" gaming compacts and preemptive federal law. A list of such known, currently pending cases is attached to this Declaration. On May 10 & 11, 2010, at my direction, my assistant Pat George confirmed the status of each case in

each county jurisdiction either through the use of the Oklahoma Supreme Court Network or through calls to the respective court clerk offices.

11. Exhibits 7-9 to the Tribe's motion for summary judgment are true and correct copies of the Oklahoma Supreme Court docket sheets in *Cossey v. Cherokee Nation Enterprises, LLC*, 2009 OK 9, 212 P.3d 447; *Griffith v. Choctaw Casino of Pocola*, 2009 OK 51; and *Dye v. Choctaw Casino of Pocola*, 2009 OK 52.

12. On December 29, 2009, the Tribe delivered a "Notice of Dispute" to Oklahoma, over my signature as the Tribe's counsel, in the form prescribed by the Compact, regarding proper interpretation of the terms and conditions of the Compact. Ex. 4 to the Tribe's Motion for Summary Judgment is a true and correct copy of that Notice.

13. Ex. 12 to the Tribe's Motion for Summary Judgment is a true and correct copy of the March 9, 2009 Brief of Amicus Curiae Brad Henry, Governor of the State of Oklahoma, and Scott Meacham, Treasurer of the State of Oklahoma, In Support of Defendants/Petitioners' Petition for Rehearing in *Cossey*, based on a certified copy thereof obtained by our firm.

14. Judge Phillips appended as exhibit B to his April 5, 2010 Arbitration Award a true and correct copy of his August 25, 2009 Arbitration Award in favor of the Chickasaw and Choctaw Nations against Oklahoma as a basis for his decision.

I declare under penalty of perjury under federal law, 28 U.S.C. §1746 that the foregoing is true and correct.

Executed on May 12<sup>th</sup>, 2010.

A handwritten signature in black ink, appearing to read "D. Michael McBride III", written in a cursive style.

---

D. Michael McBride III

2010559.02

**Exhibit to Affidavit of D. Michael McBride III**

**List of additionally-known Oklahoma Class III Compact Gaming-Related Cases Filed by Tort Claimants Against Indian Tribal Governments and Their Entities pending in Oklahoma State Courts**

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- ▲ *Allison v. Cherokee Nation Enterprises*, Case No. CJ-2009-136 (Rogers County) – Case pending; last entry on 1.12.10 – Order Continuing Temporary Stay of Proceeding; per OSCN
- ▲ *Bryant v. Choctaw Nation* CJ-07-316 (LeFlore County) – Case pending; set for scheduling conference on 7.1.10 at 10:00 a.m. – per Court Clerk's office
- ▲ *Chase v. Grand Lake Casino*, Case # CJ-2008-95 (Delaware Co.) – Case pending; last entry on 10.20.08 - stayed until further order of court – per Court Clerk's office
- ▲ *Dye v. Choctaw Nation*, CJ-2007-207 (LeFlore County) – case went to appeal in June, 2007; set for pre-trial on 9.7.10 at 1:30 p.m. – per Court Clerk's office
- ▲ *Cossey v. Cherokee Nation Enterprises* (on remand), Case No. CJ-2006-762 (Rogers County) – Case pending; last entry on 2.11.10 – Protective Order; per OSCN
- ▲ *Crocker v. Eastern Shawnee Tribe and Bordertown Casino and Bingo*, Case No. CJ-09-45 (Ottawa Co.) – Case pending; last entry on 4.28.10 - Defendant Tribal Government's Reply to Its Second Renewed Motion to Dismiss Based on New Facts and Authority: Rendering of Arbitration Award by Judge Layn Phillips; per Court Clerk's office
- ▲ *Crocker v. Wyandotte Casino*, Case No. CJ-2009-210 (Ottawa County) – Case pending; last entry filed on 7.20.09 - Entry of Appearance for Wyandotte Casino – per Court Clerk's office
- ▲ *Dorris v. Osage Million Dollar Elm Casino*, Case No. CJ-2009-336 (Osage County) – Case pending; last entry Amended Order for Hearing on Defendant's Motion to Modify or Reconsider Order

*denying Order to Dismiss; hearing set for 5.24.10 at 9:00 a.m. – per Court Clerk's office*

- ▲ *Griffith v. Choctaw Nation CJ-2006-85 (LeFlore County) – Case pending; set for pretrial on 8.30.10 at 11:00 a.m. – per Court Clerk's office*
- ▲ *Sheffer v. Avis-Rent-A-Car, Peoria Tribe, Seneca-Cayuga Tribe, Ottawa Tribe, Modoc Tribe, Miami Tribe, Wyandotte Tribe, Eastern Shawnee Tribe of OK, and Cherokee Nation et al., Case # CJ-2008-7753 (Oklahoma Co.) – Case Closed on 5.22.09 - per OSCN*
- ▲ *Stowers v. Choctaw Nation CJ-2009-311 (Pittsburg County) – Case pending; last filing was a Court Minute on 3.31.10 – "Comes on for respondent's motion to dismiss; ruling stays (sic) is hereby granted" – per Court Clerk's office*
- ▲ *Thompson v. Cherokee Nation Enterprises, Case # CJ-2008-173 (Delaware Co.) – Case dismissed on 1.21.09 – per Court Clerk's office*
- ▲ *White v. Osage Million Dollar Elm Casino & Osage Nation, Case # CJ-2008-6563 (Tulsa Co.) – Case closed on 10.23.08 – per OSCN*
- ▲ *Warner v. Grand Lake Casino, Case No. CJ-2009-395 (Delaware County) – Case pending; last entry filed on 4.8.10; Reply to Plaintiff's Brief in Opposition to Defendant's Motion to Quash and Dismiss – per Court Clerk's office*

# **EXHIBIT 12**

**ORIGINAL**

**IN THE SUPREME COURT OF THE STATE OF OKLAHOMA**

LOYMAN COSSEY,

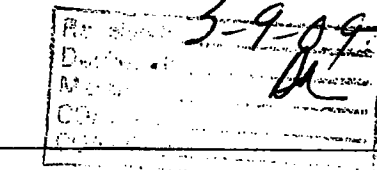
Plaintiff/Respondent,

v.

CHEROKEE NATION ENTERPRISES;  
LLC formerly known as CHEROKEE  
NATION ENTERPRISES, INC.; and  
CHEROKEE NATION ENTERPRISES,

Defendants/Petitioners

**FILED**  
**SUPREME COURT**  
**STATE OF OKLAHOMA**  
**MAR 09 2009**  
**MICHAEL S. RICHIE**  
**CLERK**



**BRIEF OF AMICUS CURIAE**  
**BRAD HENRY,**  
**GOVERNOR OF THE STATE OF OKLAHOMA,**  
**AND SCOTT MEACHAM,**  
**TREASURER OF THE STATE OF OKLAHOMA,**  
**IN SUPPORT OF**  
**DEFENDANTS/PETITIONERS'**  
**PETITION FOR REHEARING**

Appeal from the District Court of Rogers County, Oklahoma  
Case No. CJ-2006-762  
The Honorable Dynda Post, District Judge

LISA TIPPING DAVIS, OBA #10988  
GENERAL COUNSEL  
State Capitol Building  
2300 N. Lincoln Blvd., Suite 212  
Oklahoma City, OK 73105

SCOTT MEACHAM, OBA #13216  
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State Capitol Building  
2300 N. Lincoln Blvd., Suite 217  
Oklahoma City, OK 73105

ATTORNEY FOR APPLICANT  
BRAD HENRY  
GOVERNOR STATE OF OKLAHOMA

PRO SE APPLICANT  
SCOTT MEACHAM  
STATE TREASURER OF OKLAHOMA

**IN THE SUPREME COURT OF THE STATE OF OKLAHOMA**

LOYMAN COSSEY,	)	
	)	
Plaintiff/Respondent,	)	
	)	
v.	)	No. CI-105,300
	)	
CHEROKEE NATION ENTERPRISES,	)	
LLC formerly known as CHEROKEE	)	
NATION ENTERPRISES, INC.; and	)	
CHEROKEE NATION ENTERPRISES,	)	
	)	
Defendants/Petitioners	)	

---

**BRIEF OF AMICUS CURIAE  
BRAD HENRY,  
GOVERNOR OF THE STATE OF OKLAHOMA,  
AND SCOTT MEACHAM,  
TREASURER OF THE STATE OF OKLAHOMA,  
IN SUPPORT OF  
DEFENDANTS/PETITIONERS'  
PETITION FOR REHEARING**

---

Appeal from the District Court of Rogers County, Oklahoma  
Case No. CJ-2006-762  
The Honorable Dynda Post, District Judge

---

**LISA TIPPING DAVIS, OBA #10988  
GENERAL COUNSEL  
State Capitol Building  
2300 N. Lincoln Blvd., Suite 212  
Oklahoma City, OK 73105**

**SCOTT MEACHAM, OBA #13216  
STATE TREASURER OF OKLAHOMA  
State Capitol Building  
2300 N. Lincoln Blvd., Suite 217  
Oklahoma City, OK 73105**

**ATTORNEY FOR APPLICANT  
BRAD HENRY  
GOVERNOR STATE OF OKLAHOMA**

**PRO SE APPLICANT  
SCOTT MEACHAM  
STATE TREASURER OF OKLAHOMA**

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## **AMICUS CURIAE BRIEF IN SUPPORT OF PETITION FOR REHEARING**

Brad Henry, Governor of the State of Oklahoma ("Governor"), and Scott Meacham, Treasurer of the State of Oklahoma ("Treasurer"), pursuant to OKLA. SUP. CT. RULES 1.12 and the Supreme Court's Order granting the Governor's and Treasurer's Application, submit this Amicus Curiae Brief in support of Defendants/Petitioners', Cherokee Nation Enterprises, LLC, and Cherokee Nation Enterprises, Petition for Rehearing in the captioned case.

### **INTRODUCTION**

On January 20, 2009, the Oklahoma Supreme Court issued five separate opinions on whether the District Court of Rogers County, Oklahoma, is a "court of competent jurisdiction" as that term is used in the Tribal Gaming Compact between the Cherokee Nation and the State of Oklahoma (the "Compact"), executed on November 16, 2004. Ultimately, a majority of the Court found the state district court is a court of competent jurisdiction under the Compact between the State of Oklahoma and the Cherokee Nation. The Cherokee Nation Enterprises filed a Petition for Rehearing in this matter.

Brad Henry, as Governor of the State of Oklahoma, and Scott Meacham, as Treasurer of the State of Oklahoma, formerly Director of the Office of State Finance, are interested in this Petition for Rehearing because the Court's majority ruling is contrary to the intent of the compacting parties and has a potentially large negative financial impact on the State of Oklahoma. Both the Governor and the Treasurer have knowledge of relevant facts which may not be presented adequately by the litigants.

## **ARGUMENTS FOR THE PETITION FOR REHEARING**

### **I. The Court's ruling is contrary to the intent of the State of Oklahoma, a party to the Compact.**

The Court held the District Court of Rogers County, Oklahoma, is a "court of competent jurisdiction" as that term is used in the Compact. Such a ruling is contrary to the intent of the State of Oklahoma, a party to the Compact.

Indian tribes own or operate casinos within the State of Oklahoma pursuant to the terms of a gaming compact under the provisions of 3A O.S. Supp.2006, §§ 261 - 282, which is known as the State-Tribal Gaming Act. The Gaming Act legalizes conducting and participating in certain forms of gaming by those federally recognized Indian tribes within this State that choose to accept the State's offer of a gaming compact. The provisions of the Model Tribal Gaming Compact are set forth in the Gaming Act at 3A O.S. Supp.2006, § 281.

On May 19, 2004, Brad Henry, as Governor of the State of Oklahoma, signed Senate Bill 1252, which contained the final version of the Model Tribal Gaming Compact. During the negotiations, and when the Governor signed Senate Bill 1252, the Governor did not intend or understand the phrase "a court of competent jurisdiction" in Part 6(C) of the Compact to extend the jurisdiction of State courts over any claims arising in Indian country against an Indian Tribe. (See Affidavit of Brad Henry, paragraph 5, attached hereto as Exhibit "A"). Part 6(C) of the Compact provides in pertinent part as follows:

C. Limited Consent to Suit for Tort Claims and Prize Claims. The tribe consents to suit against the enterprise in a court of competent jurisdiction with respect to a tort claim or ...

The Governor intended and understood Part 9 of the Compact to preserve the preexisting jurisdiction of Tribal courts over claims arising in Indian country against Indian Tribes, including the claims described in Part 6. (See Affidavit of Brad Henry, paragraph 5, attached hereto as Exhibit "A"). Part 9 of the Compact provides as follows:

**Part 9. JURISDICTION**

This Compact shall not alter tribal, federal or state civil adjudicatory or criminal jurisdiction.

In 2003, the Governor directed Scott Meacham, then Director of the Office of State Finance, to serve as the State's lead negotiator in the negotiations with Oklahoma's Indian Tribes to establish a Model Tribal Gaming Compact. (See Affidavit of Brad Henry, paragraph 3, attached hereto as Exhibit "A"). As such, the Treasurer has direct knowledge of the intent of the State and Tribal negotiating parties with respect to the meaning of "a court of competent jurisdiction" as that phrase is employed in Part 6(C) of the State's Gaming Compacts. During the negotiations, several Indian tribes, through their lead negotiators, and the State, through the Treasurer, discussed the issue of jurisdiction by Tribal courts over claims arising in Indian country against Indian Tribes, including the claims described in Part 6 of the Compact. As a result, Part 9 of the Compact was developed to ensure that the existing jurisdictional framework of tribal jurisdiction of claims arising in Indian Country was preserved. (See Affidavit of Scott Meacham, paragraphs 4 and 5, attached hereto as Exhibit "B").

As the State's lead negotiator, the Treasurer did not intend or understand the phrase "a court of competent jurisdiction" in Part 6(C) of the Compact to extend the jurisdiction of State courts over any claims arising in Indian country against an Indian Tribe. Rather, the Treasurer, like the Governor, intended and understood that Part 9 of the Compact would preserve the

preexisting jurisdiction of Tribal courts over claims arising in Indian country against Indian Tribes, including the claims described in Part 6. (See Affidavit of Scott Meacham, paragraph 5, attached hereto as Exhibit "B"). It was the Treasurer's intent as the lead Compact negotiator on behalf of the State of Oklahoma that Part 6 (C) "a court of competent jurisdiction" clause would not extend the jurisdiction of State courts over any claims arising in Indian country against an Indian Tribe. The Court's decision effectively negates the intent of the State of Oklahoma, a party to the Compact.

While the Compact is a law of the State of Oklahoma, the Compact specifically sets forth a mechanism for the parties to the Compact, the State and the Tribe, to meet and resolve disputes over the interpretation of the Compact. Part 12 of the Compact provides in pertinent part as follows:

**Part 12. DISPUTE RESOLUTION**

In the event that either party to this Compact believes that the other party has failed to comply with any requirement of this Compact, or in the event of any dispute hereunder, including, but not limited to, a dispute over the proper interpretation of the terms and conditions of this Compact, the following procedures may be invoked:

1. The goal of the parties shall be to resolve all disputes amicably and voluntarily whenever possible. A party ... seeking an interpretation of this Compact first shall serve written notice on the other party. The notice shall identify the specific Compact provision ... in dispute ... Representatives of the tribe and state shall meet ... in an effort to resolve the dispute; ...

The Governor and the Treasurer, as representatives of the State of Oklahoma, interpret the Part 6 (C) phrase "a court of competent jurisdiction" to preserve the preexisting jurisdiction of Tribal courts over claims arising in Indian country against Indian Tribes.

**II. The Court's ruling has a potentially large negative financial impact on the State.**

Since the Court's recent decision herein that a state district court would be a court of competent jurisdiction under the Gaming Compact, the Governor and/or the Treasurer have been contacted by a number of tribes. (See Affidavit of Scott Meacham, paragraph 6, attached hereto as Exhibit "B"). The Choctaw Nation and the Chickasaw Nation have invoked the dispute resolution clause, Part 12 of the Gaming Compact recited above, contending that the Court's ruling has caused the State to be in possible imminent breach of the Compact. (See Affidavit of Scott Meacham, paragraph 6, attached hereto as Exhibit "B"). Other tribes have indicated they may do the same. Additionally, tribes have indicated that they may cease to participate in compacted gaming in the State of Oklahoma. (See Affidavit of Scott Meacham, paragraph 6, attached hereto as Exhibit "B").

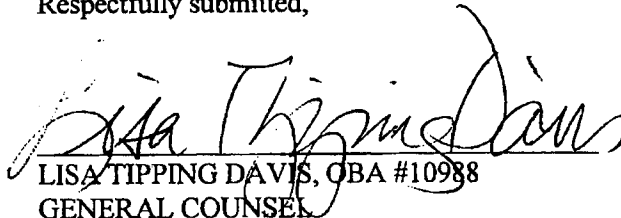
Last fiscal year, the State of Oklahoma received in excess of \$81.4 million dollars earmarked for education, from Oklahoma's gaming tribes as a result of compacted gaming. This funding source for education has grown dramatically over the past few years and is expected to continue to grow in the future. The financial impact on the State, and education funding in particular, if tribes were to cease compacted gaming would be significant.

Additionally, the effect of the Court's ruling in this case places the State in potential breach of the Compact with respect to jurisdiction of claims. The financial impact on the State and education funding from a potential breach of the Compact is substantial. If the Court's ruling stands, the State is potentially in breach of its obligations under every gaming compact between the State of Oklahoma and over 35 Indian tribes.

### CONCLUSION

Brad Henry, Governor of the State of Oklahoma, and Scott Meacham, Treasurer of the State of Oklahoma, for the reasons described above, respectfully request the Court to grant the Defendants/Petitioners', Cherokee Nation Enterprises, Petition for Rehearing in the captioned matter and determine the District Court of Rogers County, Oklahoma, is not a "court of competent jurisdiction" as that term is used in the Compact.

Respectfully submitted,



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ATTORNEY FOR APPLICANT  
BRAD HENRY  
GOVERNOR STATE OF OKLAHOMA



SCOTT MEACHAM, OBA #13216  
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State Capitol Building  
2300 N. Lincoln Blvd., Suite 217  
Oklahoma City, OK 73105

PRO SE APPLICANT  
SCOTT MEACHAM  
STATE TREASURER OF OKLAHOMA

**CERTIFICATE OF SERVICE**

I, Lisa Tipping Davis, hereby certify that the above and foregoing Brief of Amicus Curiae Brad Henry, Governor of the State of Oklahoma, and of Scott Meacham, Treasurer for the State of Oklahoma, in support of Defendants/Petitioners' Petition for Rehearing thereto were mailed by first class mail, postage prepaid, this 9 day of March, 2009, to the following:

Darren M. Tawwater  
Larry A. Tawwater  
One Leadership Square  
211 North Robinson, Suite 1950  
Oklahoma City, OK 73102

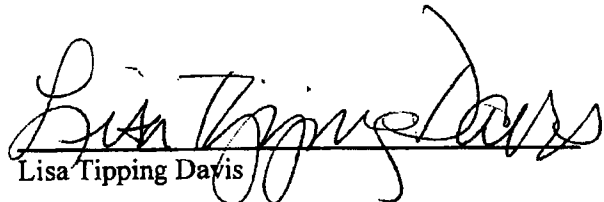
Stratton Taylor  
Bradley Harold Mallett  
Mark Harrison Ramsey  
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Claremore, OK 74018

Graydon Dean Luthey, Jr.  
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320 South Boston Avenue, Suite 200  
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520 E. Arlington  
Ada, OK 74820

Stephen H. Greetham  
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Lisa Tipping Davis

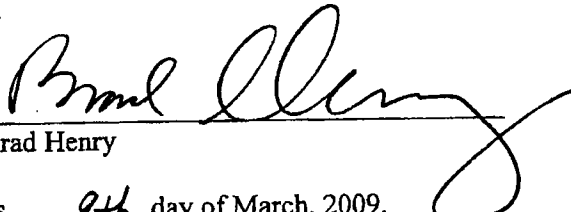
County of Oklahoma )  
 ) ss  
State of Oklahoma )

**AFFIDAVIT OF BRAD HENRY**

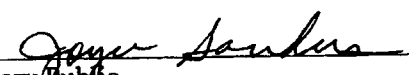
COMES now affiant, Brad Henry, of lawful age and duly sworn under oath, and states the following:

1. My name is Brad Henry, and my business address is 2300 N. Lincoln Blvd., Room 212, Oklahoma City, OK 73105.
2. I am the Governor of the State of Oklahoma, and have served in that capacity since January 13, 2003.
3. In 2003, I directed Scott Meacham, then Director of the Office of State Finance, to serve as the State's lead negotiator in the negotiations with Indian Tribes to establish a Model Tribal Gaming Compact ("Compact").
4. On May 19, 2004, I signed Senate Bill 1252, which contained the final version of the Compact as agreed to by the negotiators.
5. During the negotiations, and when I signed Senate Bill 1252, I did not intend or understand the phrase "a court of competent jurisdiction" in Part 6 (C) of the Compact to extend the jurisdiction of State courts over any claims arising in Indian country against an Indian Tribe. Rather, I intended and understood that Part 9 of the Compact would preserve the preexisting jurisdiction of Tribal courts over claims arising in Indian country against Indian Tribes, including the claims described in Part 6.

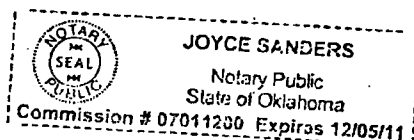
FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
Brad Henry

Subscribed and sworn to before me this 9th day of March, 2009.

  
\_\_\_\_\_  
Notary Public

My Commission expires: 12/05/11



**EXHIBIT "A"**

County of Oklahoma )  
 )  
State of Oklahoma ) ss

**AFFIDAVIT OF SCOTT MEACHAM**

COMES now affiant, Scott Meacham, of lawful age and duly sworn under oath, and states the following:

1. My name is Scott Meacham, and my business address is 2300 N. Lincoln Blvd., Room 217, Oklahoma City, OK 73105.

2. I am the State Treasurer of the State of Oklahoma, and have served in that capacity since June 1, 2005. Prior to becoming State Treasurer, I served as Director of the Office of State Finance for the State of Oklahoma.

3. During 2003 and 2004, I served, at the direction of Governor Brad Henry, as the State's lead negotiator in the negotiations with Indian tribes to establish a Model Tribal Gaming Compact ("Compact"). I served in that capacity during the entirety of the Compact negotiation process. The final version of the Compact prepared by the negotiators was approved by the Legislature and signed by Governor Henry as Senate Bill 1252 in 2004. It was also approved by the voters as State Question No. 712 on November 2, 2004.

4. During the negotiations, several Indian tribes discussed the issue of jurisdiction by Tribal courts over claims arising in Indian country against Indian Tribes, including the claims described in part 6 of the Compact. As a result, Part 9 of the Compact was developed to ensure that the existing jurisdictional framework was preserved.

5. As the State's lead negotiator, I did not intend or understand the phrase "a court of competent jurisdiction" in Part (C) of the Compact to extend the jurisdiction of State courts over any claims arising in Indian country against an Indian tribe. Rather, I intended and understood that Part 9 of the Compact would preserve the preexisting jurisdiction of Tribal courts over claims arising in Indian country against Indian Tribes, including the claims described in Part 6.

6. Since the Court's recent decision in *Cossey v. Cheokee Nation Enterprises, LLC, et al.*, that a state district court would be a court of competent jurisdiction under the Gaming Compact, I, along with the Governor's office, have been contacted by a number of tribes. The Choctaw Nation and the Chickasaw Nation have invoked the dispute resolution clause, Part 12 of the Gaming Compact recited above, contending that the Court's ruling has caused the State to be in possible imminent breach of the Compact. Other tribes have indicated they may do the same. Additionally, tribes have indicated that they may cease to participate in compacted gaming in the State of Oklahoma.

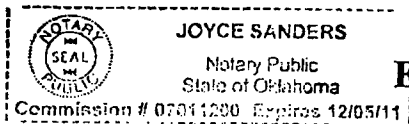
FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
Scott Meacham

Subscribed and sworn to before me this 9th day of March, 2009.

  
\_\_\_\_\_  
Notary Public

My Commission expires: 12/05/11



**EXHIBIT "B"**

**Pat George**

---

**From:** okwd\_ecf\_notice@okwd.uscourts.gov  
**Sent:** Wednesday, May 12, 2010 5:41 PM  
**To:** okwdecf@okwd.uscourts.gov  
**Subject:** Activity in Case 5:10-cv-00459-W Eastern Shawnee Tribe of Oklahoma v. Oklahoma State of Motion for Summary Judgment

This is an automatic e-mail message generated by the CM/ECF system. Please **DO NOT RESPOND** to this e-mail because the mail box is unattended.

**\*\*\*NOTE TO PUBLIC ACCESS USERS\*\*\*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

**U.S. District Court**

**Western District of Oklahoma[LIVE]**

**Notice of Electronic Filing**

The following transaction was entered by McBride, D on 5/12/2010 at 5:40 PM CDT and filed on 5/12/2010

**Case Name:** Eastern Shawnee Tribe of Oklahoma v. Oklahoma State of  
**Case Number:** 5:10-cv-459  
**Filer:** Eastern Shawnee Tribe of Oklahoma  
**Document Number:** 13

**Docket Text:**

**MOTION for Summary Judgment by Eastern Shawnee Tribe of Oklahoma. (Attachments: # (1) Exhibit 1-Model Tribal Gaming Compact, # (2) Exhibit 2-Arbitration Award dated 04.05.2010, # (3) Exhibit 3-Resolution of Dispute OK & Tribe, # (4) Exhibit 4-Notice of Dispute 12.29.2009, # (5) Exhibit 5-Joint Referral to Arbitration OK / Tribe 02.10.2010, # (6) Exhibit 6-Arbitration Award Choctaw / Chicksaw / OK 08.25.2009, # (7) Exhibit 7-Cossey decision Docket Sheet OSCN, # (8) Exhibit 8-Griffith Docket Sheet OSCN, # (9) Exhibit 9-Dye decision Docket Sheet OSCN, # (10) Exhibit 10-Declaration of Chief Glenna J. Wallace ESTOO, # (11) Exhibit 11-Declaration of D. Michael McBride III, Counsel for ESTOO, # (12) Exhibit 12-Brief Amicus Curie of Gov. Henry & Tres. Meacham in Cossey)(McBride, D)**

**5:10-cv-459 Notice has been electronically mailed to:**

D Michael McBride , III michael.mcbride@crowedunlevy.com, ecft@crowedunlevy.com, pat.george@crowedunlevy.com

Harvey D Ellis , Jr ellish@crowedunlevy.com, ecf@crowedunlevy.com, norrise@crowedunlevy.com

5/13/2010

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**5:10-cv-459 Notice has been delivered by other means to:**

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**n/a

**Electronic document Stamp:**

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**Document description:**Exhibit 1-Model Tribal Gaming Compact

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**Document description:**Exhibit 2-Arbitration Award dated 04.05.2010

**Original filename:**n/a

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**Document description:**Exhibit 3-Resolution of Dispute OK & Tribe

**Original filename:**n/a

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**Document description:**Exhibit 4-Notice of Dispute 12.29.2009

**Original filename:**n/a

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**Document description:**Exhibit 5-Joint Referral to Arbitration OK / Tribe 02.10.2010

**Original filename:**n/a

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**Document description:**Exhibit 6-Arbitration Award Choctaw / Chicksaw / OK 08.25.2009

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**Document description:**Exhibit 7-Cossey decision Docket Sheet OSCN

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**Document description:**Exhibit 8-Griffith Docket Sheet OSCN

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**Document description:**Exhibit 9-Dye decision Docket Sheet OSCN

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**Document description:**Exhibit 10-Declaration of Chief Glenna J. Wallace ESTOO

**Original filename:**n/a

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**Document description:**Exhibit 11-Declaration of D. Michael McBride III, Counsel for ESTOO

**Original filename:**n/a

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**Document description:**Exhibit 12-Brief Amicus Curie of Gov. Henry & Tres. Meacham in Cossey

**Original filename:**n/a

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