

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

CHOCTAW NATION OF OKLAHOMA)
and CHICKASAW NATION,)

Plaintiffs,)

vs.)

No. CIV-10-50-W

STATE OF OKLAHOMA,)

Defendant.)

**JUDGMENT CERTIFYING ARBITRATION AWARD AND
GRANTING PERMANENT INJUNCTION**

This matter came before the Court on the Motion for Summary Judgment, as amended, filed pursuant to Rule 56, F.R.Civ.P., by plaintiffs Choctaw Nation of Oklahoma ("Choctaw Nation") and Chickasaw Nation ("Chickasaw Nation") (collectively "Nations") and the response thereto filed by the defendant, State of Oklahoma. On June 22, 2010, the Court granted the Nations' Motion for Summary Judgment, as amended, in all respects and found that the Nations are entitled to judgment as a matter of law certifying and enforcing the Arbitration Award dated August 25, 2009, *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*, against the State of Oklahoma.

Accordingly, the Court pursuant to its Order dated June 22, 2010, hereby CONFIRMS and CERTIFIES the Arbitration Award dated August 25, 2009, and ORDERS that judgment should be and is hereby entered in favor of the Nations.

The Court further found in its Order dated June 22, 2010, that the Nations were entitled to the injunctive relief they had requested against the State of Oklahoma.

Accordingly, the Court pursuant to Rule 65(d), F.R.Civ.P., sets forth the basis for the permanent injunctive relief granted herein, its terms, and the acts permanently restrained through this Judgment:

1. The Nations brought this action against the State of Oklahoma to certify and enforce an Arbitration Award finding, *inter alia*, that the Choctaw Nation and the Chickasaw Nation judicial forums have exclusive jurisdiction over all Compact-based tort claim and/or prize claim lawsuits.

2. The Indian Gaming Regulatory Act, codified at 25 U.S.C. § 2701 *et seq.*, provides that a compact may be negotiated between a tribal government and a state to govern the conduct of "Class III gaming" on Indian lands. *E.g., id.* § 2710(d).

3. "[C]lass III gaming activity on the Indian lands of the Indian tribe shall be fully subject to the terms and conditions of the Tribal-State compact entered into . . . by the Indian tribe that is in effect." *Id.* § 2701(d)(2)(C).

4. On November 2, 2004, by a vote of the people of the State of Oklahoma, Oklahoma State Question 712 was adopted. State Question 712 proposed a model tribal gaming compact as an offer to federally recognized Oklahoma tribes to engage in "Class III gaming" on tribal lands within their Indian country under the terms and

conditions of the compact. See 3A O.S. § 281 (codification of State Question 712, Model Tribal Gaming Compact).

5. Part 6 of the model tribal gaming compact addresses and outlines the procedures for prize claim disputes brought by patrons of facilities covered by the compact, *id.* Part 6(B), as well as the procedures for tort claims for personal injury or property damage arising out of incidents that occur at facilities covered by the compact. *Id.* Part 6(A).

6. It also provides that the tribe agreeing to the terms of the compact "consents to suit . . . in a court of competent jurisdiction with respect to a tort claim or prize claim if all the requirements . . . have been met" *Id.* Part 6(C). And Part 9 of the model tribal gaming compact expressly provides that the "[c]ompact shall not alter tribal, federal or state civil adjudicatory or criminal jurisdiction."

7. Part 6(A)(2) specifically states that "[n]o 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 th[e] [c]ompact, except as provided in subsections B and C of this Part." *Id.* Part 6(A)(2).

8. Part 12 of the model tribal gaming compact, entitled "Dispute Resolution," provides that arbitration of compact disputes, including "any dispute . . . over the proper interpretation of the terms and conditions of th[e] [c]ompact," *id.* Part 12, is "subject to enforcement or . . . review as provided by paragraph 3 of . . . Part [12] by a federal district court." *Id.*

9. Part 12 of the model tribal gaming compact provides the exclusive means by which compact terms may be interpreted and further instructs that "[t]he remedies

available through arbitration are limited to enforcement of the provisions of th[e] [c]ompact." *Id.* Part 12(2).

10. Part 12(2) provides that "[t]he parties consent to the jurisdiction of such arbitration forum and court for such limited purposes and no other," *id.*, and that "each waives immunity with respect thereto." *Id.*

11. Part 12(3) of the model tribal gaming compact states that "either party to the [c]ompact may bring an action against the other in a federal district court for the de novo review of any arbitration award," *id.* Part 12(3), and that "[e]ach of the parties . . . waives immunity and consents to suit . . . 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." *Id.*

12. Part 13(B) of the model tribal gaming compact provides that "[t]h[e] [c]ompact shall constitute a binding agreement between the parties" *Id.* Part 13(B).

13. On November 23, 2004, Chickasaw Nation accepted the State of Oklahoma's offer and entered into the Chickasaw Nation and State of Oklahoma Gaming Compact with the State of Oklahoma, which became effective February 8, 2005, the date of its publication in the Federal Register, following the approval of the Secretary of the Interior.

14. On November 24, 2004, Choctaw Nation likewise accepted the State of Oklahoma's offer and entered into the Choctaw Nation and State of Oklahoma Gaming Compact with the State of Oklahoma, which became effective February 9, 2005, the

date of its publication in the Federal Register, following the approval of the Secretary of the Interior.

15. The terms and provisions of the Chickasaw Nation and State of Oklahoma Gaming Compact and the Choctaw Nation and State of Oklahoma Gaming Compact (collectively "Compacts") for purposes of this lawsuit are identical to the terms and provisions of the model tribal gaming compact, see 3A O.S. § 281, and contain the provisions herein set forth.

16. On January 20, 2009, with four Justices dissenting and no majority opinion, the opinions of five Justices of the Oklahoma Supreme Court asserted the existence of state court civil-adjudicatory jurisdiction over a compact-based, Indian country-arising tort lawsuit against the Cherokee Nation of Oklahoma. See *Cossey v. Cherokee Nation Enterprises, LLC*, 212 P.3d 447 (Okla. 2009). The Oklahoma Supreme Court held "that the state court [was] . . . a 'court of competent jurisdiction' as that term . . . [was] used in the [Tribal Gaming] Compact [between the Cherokee Nation and the State of Oklahoma] executed [on November 16, 2004]" *Id.* at 450.

17. In response thereto, on February 4, 2009, the Choctaw Nation provided a Notice of Dispute to the State of Oklahoma in the form prescribed by the Choctaw Nation of Oklahoma and State of Oklahoma Gaming Compact over the proper interpretation of the terms and conditions of that Compact, and the Notice of Dispute triggered the dispute-resolution proceedings outlined in that Compact.

18. On that same day, Choctaw Nation also moved to stay two matters then pending in the Oklahoma Supreme Court until completion of the dispute-resolution proceedings between Choctaw Nation and the State of Oklahoma. In those two cases,

Dye v. Choctaw Casino of Pocola, Oklahoma, Case No. 104,737, and *Griffith v. Choctaw Casino of Pocola, Oklahoma*, Case No. 104,887, the plaintiffs had appealed the dismissal of their state court casino-related tort actions against Choctaw Nation.

19. By Order dated March 3, 2009, the Oklahoma Supreme Court refused to stay the proceedings in *Dye* and *Griffith* pending completion of the dispute-resolution proceedings between Choctaw Nation and the State of Oklahoma.

20. On March 6, 2009, Chickasaw Nation (a non-party to any state-court compact-based tort litigation), independently invoked the dispute-resolution procedures provided in the Chickasaw Nation and State of Oklahoma Gaming Compact by providing a Notice of Dispute to the State of Oklahoma in the form prescribed in that Compact.

21. On June 11, 2009, the Oklahoma Supreme Court denied the Petition for Rehearing filed by the Cherokee Nation of Oklahoma in *Cossey* and issued its mandate, directing the state district court to proceed on the merits of the tort action.

22. On June 30, 2009, with four Justices again dissenting, the Oklahoma Supreme Court issued five opinions in *Griffith v. Choctaw Casino of Pocola*, 230 P.3d 488 (Okla. 2009)(per curiam), and three opinions in *Dye v. Choctaw Casino of Pocola*, 230 P.3d 507 (Okla. 2009)(per curiam). In both cases, the Oklahoma Supreme Court held "that Oklahoma district courts are 'courts of competent jurisdiction' as that phrase is used in Oklahoma's statutory model tribal gaming compact and therefore the state courts may exercise jurisdiction over . . . tort claims against the Choctaw Nation and its casino in Pocola, Oklahoma." *Griffith*, 230 P.3d at 491; e.g., *Dye*, 230 P.3d at 509.

23. On July 20, 2009, the Nations and the State of Oklahoma executed a *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* ("Joint Referral"). In the Joint Referral, the parties agreed to

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, jurisdiction over all Compact based tort claim and/or prize claim lawsuits lies exclusively in Choctaw Nation or Chickasaw Nation forums.

24. In the Joint Referral, the parties also "agree[d] to the entry of judgment on, and/or 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 th[e] . . . [Chickasaw Nation and State of Oklahoma Gaming Compact and the Choctaw Nation and State of Oklahoma Gaming Compact]."

25. On August 25, 2009, Layn R. Phillips rendered the Arbitration Award certified and confirmed in this matter and held that the Choctaw Nation and the Chickasaw Nation judicial forums have exclusive jurisdiction over all Compact-based tort claim and/or prize claim lawsuits. As set forth in the Arbitration Award, the term "court of competent jurisdiction" as used in Part 6(C) of the Nations' Compacts cannot properly be interpreted to include the courts of the State of Oklahoma. Rather, this provision in the Compacts refers only to the Nations' tribal courts. Part 9 of the Nations' Compacts makes clear that "[t]his Compact shall not alter tribal, federal or state civil adjudicatory or criminal jurisdiction." As stated in the Arbitration Award, there was no relevant pre-

existing state court jurisdiction before the Compacts, and the Compacts did nothing to alter state court jurisdiction. Accordingly, any attempt by any Oklahoma state court, including the Oklahoma Supreme Court, to exercise jurisdiction over a Compact-based tort claim and/or prize claim lawsuit is a violation of the sovereignty of the Nations, and is therefore improper and must be permanently enjoined given the refusal by the Oklahoma Supreme Court to properly construe the terms and provisions of the Nations' Compacts.

24. After the Arbitration Award was issued, Choctaw Nation filed a Motion to Honor the Arbitration Award with the Oklahoma Supreme Court in *Dye and Griffith*. On April 12, 2010, the Oklahoma Supreme Court denied all Petitions for Rehearing and Motions to Honor the Arbitration Award filed by Choctaw Nation.

25. The remedies available at law to the Nations, including monetary damages, are inadequate, and the Nations will suffer irreparable harm if a permanent injunction is not issued against the State of Oklahoma, including its judicial branch, prohibiting it from exercising jurisdiction over all Compact-based tort claim and/or prize claim lawsuits against the Nations, whether currently pending in any state court in the State of Oklahoma or filed at any point in time in the future.

26. The balance of equities favors the Nations, and the granting of a permanent injunction against the State of Oklahoma as requested by the Nations will not adversely affect the public interest, since tribal forums exist for the resolution of Compact-based, Indian country arising tort lawsuits against the Nations.

Terms of Permanent Injunctive Relief and Actions Enjoined

Accordingly, the Court ORDERS, ADJUDGES, AND DECREES that the State of Oklahoma and all of its officials, agencies, branches of government (including, but not limited to, the Oklahoma Supreme Court, the Oklahoma Court of Civil Appeals and all state district courts located in the State of Oklahoma), officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with them shall be and are hereby PERMANENTLY ENJOINED, directly or indirectly, from asserting civil-adjudicatory jurisdiction over Compact-based tort claim and/or prize claim lawsuits against the Nations.

The permanent injunctive relief awarded herein applies to all Compact-based tort claim and/or prize claim lawsuits against the Nations, whether such lawsuits are currently pending in any state court in the State of Oklahoma or are brought in any state court in the State of Oklahoma at any point in time in the future.

The Court retains jurisdiction in this matter for the purpose of enforcing the terms of its Order and Judgment as to all parties.

The State of Oklahoma may petition the Court to modify or vacate the permanent injunction issued this date if applicable federal law relating to the jurisdiction of federal and state courts as it pertains to the issues in this action changes.

The State of Oklahoma is hereby ORDERED to give immediate notice, as appropriate, of the issuance and terms of this Judgment to all of its officials, agencies, branches of government (including, but not limited to, the Oklahoma Supreme Court, the Oklahoma Court of Civil Appeals and all state district courts located in the State of

Oklahoma), officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with them, bound by the terms of this Judgment.

DATED and ENTERED this 29th day of June, 2010.



LEE R. WEST
UNITED STATES DISTRICT JUDGE