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FILED

DEC 27 2011

Phil Lombardi, Clerk
U.S. DISTRICT COURT

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA**

EDDIE SANTANA)

Plaintiff,)

vs.)

MUSCOGEE CREEK NATION, ex. rel.)

RIVERSPIRIT CASINO ,)

Defendants.)

CASE NO: 11-CV-782-JHP PJC

**PLAINTIFF'S REQUEST FOR COURT TO ASSUME JURISDICTION IN
PLACE OF IF NOT OKLAHOMA INSTEAD OF TRIBAL COURT WITH
BRIEF IN SUPPORT**

COMES NOW the Plaintiff Eddie Santana and for his objection and brief states:

1. The Defendant's Muscogee Creek Nation ("herein, "the Nation") and River Spirit Casino raises the question whether Oklahoma court has jurisdiction over the instant removed action.

2. I believe this Court has jurisdiction under 28 U.S.C. § 1441 and should address whether Oklahoma state court had jurisdiction to adjudicate the matter, and if not assume jurisdiction and proceed on the case to its merits. Further, since the U.S. District Court has issued an injunction for the Oklahoma state courts to hear any more Indian tort cases, this Court would be the next most reasonable court of competent jurisdiction in this matter.

ARGUMENTS AND AUTHORITIES

I.

JURISDICTION

3. It's interesting that the Nation would say that Oklahoma is not a court of competent jurisdiction under Part 9 of the Compact, because under Montana v. United States, 450 U.S. 544, 564, 101 S.Ct. 1245, 1258-59, 67 L.Ed.2d 493 (1981) and Plains Commerce Bank v. Long Family Land and Cattle Company, Inc., ___ U.S. ___, 128 S.Ct. 2709, 2720, 171 L.Ed.2d 457, 76 U.S.L.W. 4558 (2008) the Nation probably does not have jurisdiction either for lack of being able to regulate a non-Indian while in Indian County.

4. I quote from the flagship Oklahoma Supreme Court case Cossey v. Cherokee Nation Enterprises, LLC, 2009 OK 6, 212 P.3d 447, “
¶23 *If non-Indians' activities fall within the Montana exceptions, the tribe may regulate those activities under its sovereign powers. If the tribe has power to regulate, or legislate, the activities of the Plaintiff non-members, the tribe may also have civil adjudicatory authority, or jurisdiction, over the non-members' activities in tribal court. However, without that power to regulate non-members' activities, the Tribe may*

not assert civil jurisdiction over them in tribal court. See Strate, 520 U.S. at 453, 117 S.Ct. at 1413; Nevada v. Hicks, 533 U.S. at 374, 121 S.Ct. at 2318; and Plains Commerce Bank v. Long Family Land and Cattle Company, Inc., ___ U.S. ___, 128 S.Ct. 2709, 2720, 171 L.Ed.2d 457, 76 U.S.L.W. 4558 (2008)... As pertinent to the instant case, a tribe would also have immunity from being sued in state court. As we noted recently in Bittle v. Bahe, "It is the sovereignty that gives rise to the immunity from private suit in order to protect the dignity of the sovereign." ¶24 We must determine whether Cossey's activities come within those which may be regulated by the tribe as a sovereign entity. We must, therefore, consider whether his activities come within the definition of the tribe's sovereign interests, the Montana exceptions, or a federal statute or treaty enlarging the Tribe's powers. ¶25 Under Montana, the tribes' retained inherent powers of self-government involve only the relations among members of a tribe. It is consistent with the "dependent status" of tribes; it is necessarily inconsistent with their freedom to determine their "external relations." ¶26 Under the Supreme Court's newest pronouncement, Plains Commerce Bank v. Long Family Land and Cattle Company, Inc., ___ U.S. ___, 128 S.Ct. 2709, 171 L.Ed.2d 457, 76 U.S.L.W. 4558 (2008)... ¶27 The Court held that Montana does not permit tribes to regulate the sale of non-Indian fee land. The particular land had ceased being part of the tribe's land many years earlier. Instead, it explained that Montana and its progeny

"permit tribal regulation of nonmember conduct inside the reservation that implicates the tribe's sovereign interests."... The Court further stated: Montana expressly limits its first exception to the 'activities of nonmembers,' . . . allowing these to be regulated to the extent necessary 'to protect tribal self-government [and] to control internal relations,' ... (Montana does not grant a tribe unlimited regulatory or adjudicative authority over a nonmember. Rather, Montana limits tribal jurisdiction under the first exception to the regulation of the activities of nonmembers'... Plains, 121 S.Ct. at 2721. ¶28 The Court held that the sale of such land did not affect the Tribe's sovereign interests. The Court stated the logic of Montana: [C]ertain activities on non-Indian fee land (say, a business enterprise employing tribal members) or certain uses (say, commercial development) may intrude on the internal relations of the tribe or threaten tribal self-rule. To the extent they do, such activities or land uses may be regulated. See Hicks, supra, at 361, 121 S.Ct. 2304 ("Tribal assertion of regulatory authority over nonmembers must be connected to that right of the Indians to make their own laws and be governed by them"). Put another way, certain forms of nonmember behavior, even on non-Indian fee land, may sufficiently affect the tribe as to justify tribal oversight. While tribes generally have no interest in regulating the conduct of nonmembers, then, they may regulate nonmember behavior that implicates tribal governance and internal relations. Plains, 128 S.Ct. at 2723 (emphasis

added). ¶29 *The Plains Court stated that the regulations it had approved under Montana "all flow directly from these limited sovereign interests." 128 S.Ct. at 2723.²² However, the Court held that the "regulation of the sale of non-Indian fee land, unlike the above, cannot be justified by reference to the tribe's sovereign interests." 128 S.Ct. at 2723. The land had already been alienated from the tribal trust; it had ceased being tribal land. Id. The Court stated, at 128 S.Ct. at 2724: Not only is regulation of fee land sale beyond the tribe's sovereign powers, it runs the risk of subjecting nonmembers to tribal regulatory authority without commensurate consent. Tribal sovereignty, it should be remembered, is 'a sovereignty outside the basic structure of the Constitution.'* *United States v. Lara*, 541 U.S. 193, 212, 124 S.Ct. 1628, 158 L.Ed.2d 420 (2004) (KENNEDY, J., concurring in judgment). *The Bill of Rights does not apply to Indian tribes. See Talton v. Mayes*, 163 U.S. 376, 382-385, 16 S.Ct. 986, 41 L.Ed. 196 (1896). *Indian courts 'differ from traditional American courts in a number of significant respects.'* *Hicks*, 533 U.S., at 383, 121 S.Ct. 2304 (SOUTER, J., concurring). ¶30 *The regulation imposed on nonmembers "must stem from the tribe's inherent sovereign authority to set conditions on entry, preserve tribal self-government, or control internal relations." Plains*, 128 S.Ct. at 2724, citing *Montana*, 450 U.S. at 564. *Without the logic of Plains, which incorporates the general rule of Montana and its exceptions, Cossey and all other non-Indians would unknowingly*

subject themselves to tribal regulation and, thus, to tribal court jurisdiction without their consent merely by entering a casino in Indian Country. Moreover, without Plains and Montana, non-Indians could unwittingly waive their rights to seek relief in the state courts of Oklahoma. ¶31 Citing Atkinson Trading Co. v. Shirley, 532 U.S. 645, 121 S.Ct. 1825, 149 L.Ed.2d 889 (2001), the Plains Court referred to the general proposition under Montana that the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe. "[E]fforts by a tribe to regulate nonmembers, especially on non-Indian fee land, are 'presumptively invalid,' Atkinson, supra, at 659, 121 S.Ct. 1825. The burden rests on the tribe to establish one of the exceptions to Montana's general rule that would allow an extension of tribal authority to regulate nonmembers on non-Indian fee land. Atkinson, 532 U.S., at 654, 121 S.Ct. 1825." Plains, 128 S.Ct. at 2720. In the present case, we find the Tribe has not met its burden of establishing that it falls within one of Montana's exceptions. ¶32 The Court also discussed the status of the land at issue as it related to the regulation of nonmember activity on the land. In Plains, this was fee land, i.e., land which had been previously alienated from tribal lands within the reservation. The Court approvingly quoted from Justice Souter's concurring opinion in Nevada v. Hicks, stating, "The status of the land is relevant 'insofar as it bears on the application of . . . Montana's exceptions to [this] case.'" Nevada v. Hicks, 533 U.S. at 376

(SOUTER, J., concurring). Although Plains did not specifically quote further from Justice Souter's concurring opinion, we find it to be instructive in the instant case, in which a non-Indian defendant was injured on trust land. It provides, in part: Montana applied this presumption against tribal jurisdiction to nonmember conduct on fee land within a reservation; I would also apply it where, as here, a nonmember acts on tribal or trust land, and I would thus make it explicit that land status within a reservation is not a primary jurisdictional fact, but is relevant only insofar as it bears on the application of one of Montana's exceptions to a particular case. . . .After Strate, it is undeniable that a tribe's remaining inherent civil jurisdiction to adjudicate civil claims arising out of acts committed on a reservation depends in the first instance on the character of the individual over whom jurisdiction is claimed, not on the title to the soil on which he acted. The principle on which Montana and Strate were decided (like Oliphant before them) looks first to human relationships, not land records, and it should make no difference per se whether acts committed on a reservation occurred on tribal land or on land owned by a nonmember individual in fee. It is the membership status of the unconsenting party, not the status of real property, that counts as the primary jurisdictional fact. Nevada v. Hicks, 533 U.S. 353, 375-376, 381-82, 121 S.Ct. 2304, 2318-19, 2322 (SOUTER, J., concurring). In a footnote following the above excerpt Justice Souter explained that land

status is not irrelevant to a proper application of Montana, only that it is not determinative. ¶33 Thus, it is the regulation of the activities of non-members on the land, rather than the resale of the land, which the Plains Court found to be the key point with regard to the tribe's sovereign interests. 128 S.Ct. at 2724. In fact, the Court stated that in none of its previous cases has it found that Montana authorized a tribe to regulate the sale of non-Indian fee land. "Rather, our Montana cases have always concerned nonmember conduct on the land." Plains, 128 S.Ct. at 2722, citing Hicks, 533 U.S., at 359, 121 S.Ct. at 2309-10 (citations omitted).

VIII. COSSEY'S ACTIVITIES IN INDIAN COUNTRY---¶34 ... the difference in the status of the land does not take this case out of the Montana rule. ¶35 Cossey was on the casino premises as an invitee of the Tribe. As such, the Tribe had the duty to exercise reasonable care to keep the premises in a reasonably safe condition and to warn Cossey of conditions which were in the nature of hidden dangers, traps, snares or pitfalls. See Martin v. Aramark Services, Inc., 2004 OK 38, 92 P.3d 96. However, the Tribe's obligation to compensate Cossey for his injuries, upon proper proof, has not been in dispute by these parties. The dispute centers around whether the state court has jurisdiction over his claim. ¶36 We examine whether Cossey's activity, i.e., visiting the casino as an invitee on Indian lands, is an activity which the Tribe can regulate under its "inherent sovereign interests." If such activity is one which comes within the Montana

exceptions, the Tribe can regulate it and assume civil adjudicatory jurisdiction over him in tribal court. ¶37 Cossey entered into no consensual relationship with the Tribe "through commercial dealing, contracts, leases, or other arrangements" by entering the casino as a customer. The Compact represents a consensual relationship between the Tribe and the State, but Cossey was not a party to it. Moreover, his presence at the casino on reservation lands was not conduct which "threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe." See Montana, 450 U.S. at 566, 101 S.Ct. at 1258. Neither Montana exception helps the Tribe in this case.

5. My point would be that if the State of Oklahoma doesn't have jurisdiction under the Compact, and if tribal court doesn't have jurisdiction, then the only court left with jurisdiction would be this instant Court.
6. That being said, putting myself in the place of Cossey, in the above case, jurisdiction centers on the Montana rule. I was on the casino premises as an invitee of the Tribe. As such, the Tribe had the duty to exercise reasonable care to keep the premises in a reasonably safe, including enforcing Part 5(E) of the Compact (see attached Compact) which states that employees of the Casino are to be trained in spotting "compulsive gamblers" including asking them to leave upon identifying such a person. Since they did not do this they should be open to the

liability under Part 6 of the Compact (tort claims). Because of their negligence in not enforcing Part 5(E) I could not stop myself from “giving away” my money; money I could not afford, which I borrowed for my education (loans of which were guaranteed by the U.S. Dept. of Education.)

7. In the Western District case where the Nation got an injunction against Oklahoma hearing Compact tort cases, I guess since Oklahoma didn't appeal the arbitration award they don't care if they have jurisdiction to hear Compact court cases or not so this Court would be the only remedy available to Compact tort claimants such as myself right now.

II.

ADDRESSING THE NATION'S ALLEGATIONS/ STATEMENT OF MY CLAIM

8. My claims center around a party's capacity to understand the nature of what one is doing or having the inability to stop oneself from giving away their substance (uncontrollable impulse). The strict rationale that blames the gambler for going to the place of his demise of his own free will would not come into play since it is a mental defect, (that is, the “disease” of gambling that the Nation admits exists in their literature) that drives a person to go to the gambling establishment to begin with.
9. People refer to it as gaming? Why is that? Are the words gamble and gambling so unsavory as to remind people what they did before and after they visited the gambling establishment? Sure, people want to sugar coat it so when unfortunates such as myself lose over \$70,000

dollars (of money which is 7 times more money than that person earns a year) they can justify themselves. The question that will be presented to this Court if allowed to would be is it equitable and justifiable for a person or establishment to take advantage of a persons incapacity or illness to the extreme amounts in question whether they knew of such an illness or incapacity or not. (Common sense and foreseeability would dictate that with all the advertising done and all gross traffic that goes through the Casino the probability of problem gamblers walking through the doors is highly probably and foreseeable, and is confirmed when the employees witness huge amounts of money being wagered by any one individual). There are visible signs that offer telephone numbers for help to problem gamblers which is evidence the Casino knows there are, or will be problem gamblers walking through their doors.

10. The Nation claims that my tort claim is not covered by Part 6 of the Compact. No where in the Compact does it state the “types” of tort claims covered. In fact, Part 6(A) of the Compact states in relevant part, *“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...”*
11. It further states in Part 6(C) of the types of tort claims allowed, *“C. Limited Consent to Suit for Tort Claims and Prize Claims. The tribe*

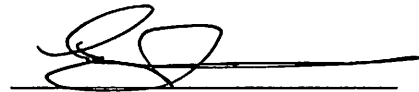
consents to suit against the enterprise in a court of competent jurisdiction with respect to a tort claim or prize claim if all requirements of paragraph 9 of subsection A or all requirements of paragraph 11 of subsection B of this Part have been met; provided that such consent shall be subject to the 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.” I have previously averred and affirmed that I have fulfilled all requirements of filing a tort claim and further that my claim of \$49,000.00 does not exceed the liability limits in the Compact.

12. I, the Plaintiff did not enter into a consensual relationship with the Tribe "through commercial dealing, contracts, leases, or other arrangements" by entering the casino as a customer. My presence at the casino on Indian land was not conduct which "threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe."
13. Therefore, the Nation did waive immunity for Compact purposes, and since the Montana Exceptions are not met and Tribal Court has no jurisdiction in this case the case should proceed in this Court if it is not remanded back to Oklahoma state court. I will conclude with a quote from my previous pleading to incorporate in this document.

14. III.
15. CASINO ACCOUNTABILITY
16. In the same way that according to tort law a land owner or occupier is responsible for injuries on his land, the casino should be responsible for financial injuries that stem from gaming in the casino as well. While it is true that the casino does not force anyone to gamble or play games or devices of chance, people will do it because they are compelled by an illness to do it. Whether for pleasure, or uncontrollable impulse or both, a person will take that chance and gamble because the casino makes it available.
17. The casino also takes great pains in advertising to bring people to the casino. The casino will place ads on TV, radio, and billboards, as well as city buses adorned and covered with a casino invitation. So while the casino doesn't force anyone to gamble, their advertising drawing people in activates the illness that makes people force themselves to gamble.
18. Statistics show that six percent of the U.S. population is addicted to gambling in whatever form. Within that 6 percent many people attempt or commit suicide because of gambling losses. In the United States, 6 percent of men die of pancreatic cancer yearly. Just like one death from cancer is unacceptable, one life ruined because of gambling should be unacceptable as well. Just like people don't say of cancer, "Oh well, that's just nature" or "that's just natural" or "that's too bad," people are

still trying to do something and ease the quality of life of those suffering and not just sitting by and just lamenting the loss. I contend that any harm done because of gambling to the victim incurs a sort of strict liability on the part of the casino, since they do make the gambling available, and do draw people in by way of their heavy advertising, despite people doing it (allegedly) of "their own free will." When I prove my damages I should be able to get relief according to the gaming Compact. Lastly, as an intended third-party beneficiary of the Compact between the Nation and the State of Oklahoma I invoke help of the State of Oklahoma who have an interest in enforcing the Compact between the parties. **I am submitting this document despite the fact I never received any notice except what I gleaned from the internet on PACER.**

Respectfully submitted,



DATED THIS DAY
OF DECEMBER, 2011

Eddie Santana
Pro Se Plaintiff
731 E. 43rd St. N.
Tulsa, OK 74106
(949) 200-0779

CERTIFICATE OF MAILING

I, Eddie Santana, hereby certify that on the 27 day of December 2011, I mailed a correct copy of the above and foregoing with proper postage or faxed to:

**ATKINSON, HASKINS, NELLIS,
BRITTINGHAM, GLADD & CARWILE**
A PROFESSIONAL CORPORATION,
Gregory D. Nellis,
Michael A. Simpson,
525 South Main, Suite 1500
Tulsa, OK 74103-4524
Telephone: (918) 582-8877
Facsimile: (918) 585-8096
*Attorneys for Defendant Muscogee Creek Nation
and River Spirit Casino*

A handwritten signature in black ink, appearing to read 'Eddie Santana', with a long horizontal flourish extending to the right.

Eddie Santana

MODEL TRIBAL GAMING COMPACT

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 tribes 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 tribes lands to the tribes 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

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 oversight 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 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;
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 tribes 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;

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 states 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 tribes 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 tribes 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 tribes 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 tribes 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 tribes 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 tribes 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 Commissions Minimum Internal Control Standards (25 12 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,
 - e. the location of the incident,
 - f. the nature of the incident,
 - g. the identity, including identification information, of any persons involved in the incident and any known witnesses to the incident, and
 - h. 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 tribes 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.