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11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE DISTRICT OF ARIZONA

13 GRAND CANYON SKYWALK
14 DEVELOPMENT, LLC, a Nevada limited
15 liability company,

16 Plaintiff,

17 vs.

18 'SA' NYU WA, a tribally-chartered
19 corporation established under the laws of the
20 Hualapai Indian Tribe; GRAND CANYON
21 RESORT CORPORATION, a tribally-
22 chartered corporation established under the
23 laws of the Hualapai Indian Tribe; LOUISE
24 BENSON, RICHARD WALEMA, SR.,
25 WYNONA SINYELLA, RUBY STEELE,
26 SHERI YELLOWHAWK, CANDIDA
HUNTER, BARNEY ROCKY IMUS,
WAYLON HONGA, CHARLES VAUGHN,
SR., each individuals and members of the
Hualapai Tribal Council; WANDA EASTER
and JACI DUGAN, each individuals and
Hualapai Indian Tribe employees and HON.
JOLENE COONEY and HON. DUANE
YELLOWHAWK, each individuals and
judges of the Hualapai Tribal Court,

27 Defendants.
28

No. 3:12-cv-08030-DGC

(Case to be Transferred
No. 12-cv-08183-FJM)

**REPLY IN SUPPORT OF SNW'S
MOTION FOR JUDICIAL
TRANSFER PURSUANT TO
LOCAL RULE 42.1**

1 SNW respectfully submits the following Reply in Support of its Motion for
2 Judicial Transfer.

3 **I. RELEVANT FACTS.**

4 SNW does not believe that a Motion for Judicial Transfer is the appropriate forum
5 to challenge GCSD's mischaracterization of specific facts concerning the actual
6 arbitration proceeding.¹ Moreover, the particular facts recited have no bearing on the
7 limited question of whether the instant Arbitration Action and *GCSD II* share a
8 substantial similarity of events, transactions, legal issues, and parties such that judicial
9 transfer to Judge Campbell is appropriate and will promote judicial economy. However,
10 SNW welcomes the opportunity to address GCSD's version of the facts after a
11 determination has been reached on the motion to transfer.

12 **II. GCSD ARGUED IN GCSD II THAT THE CONDEMNATION AND**
13 **ARBITRATION ACTIONS WERE NOT ONLY SUBSTANTIALLY**
14 **RELATED BUT ONE AND THE SAME.**

15 GCSD's Response in Opposition to Motion for Judicial Transfer Pursuant to Local
16 Rule 42.1 ("GCSD Response") is confounding for a variety of reasons, but none more so
17 than GCSD's conclusory insistence that the separate actions do not arise from
18 substantially the same events or transaction. GCSD appears to argue that the actions are
19 completely separate because it unilaterally initiated arbitration under the 2003 Agreement
20 before the Tribe filed its Declaration of Taking to condemn GCSD's interest in the 2003
21 Agreement. The instant Arbitration Action, *GCSD I*, and *GCSD II* all arise from the

22 ¹ As an example, GCSD incorrectly claims that "... SNW did participate in the
23 arbitration proceedings ... for months after GCSD filed its initial Arbitration
24 Complaint. ..." See GCSD Response at 3. GCSD omits that SNW filed its Answer and
25 Counterclaims under protest and without waiver of its objections to jurisdiction based on,
26 *inter alia*, the 2003 Agreement and sovereign immunity. See SNW's AAA Arbitration
27 Answer & Counterclaims, at 1, attached as **EXHIBIT 1**. SNW's appearance under
28 protest in arbitration is no different that GCSD's preservation of its objection to Hualapai
Tribal Court jurisdiction over GCSD, despite GCSD's continued appearance at hearings
and filing of pleadings in the Tribal Court.

1 same transaction – the 2003 Agreement. All of these cases are intimately related to and
 2 arise out of the existence of the 2003 Agreement, the terms of the 2003 Agreement, and
 3 the Tribe’s condemnation of GCSD’s interest in the 2003 Agreement. GCSD itself
 4 argued to this Court that the separate actions are related through the same facts and
 5 issues, and even argued that *GCSD II* and the arbitration were the one and the same
 6 action:

7 [Mr. Tratos] Essentially, the contract between Grand Canyon
 8 Skywalk and SNW is the arbitration, this contract becomes
 9 the arbitration. They've essentially come through and said all
 10 these rights, all of the things you claim don't matter anymore.
 We can eliminate any right you had previously. Retroactively
 as well as prospectively.

11 *See* 02/24/12 *GCSD II*, TRO Hearing Transcript, at 62:16-21 and 56:14-22 (“This
 12 [condemnation action] is an arbitration action. We should be back in arbitration because
 13 that’s what the parties agreed to . . .”), attached as **EXHIBIT 2**. So, while condemnation
 14 came sequentially after arbitration, the factual events and transactions that predominately
 15 inform and govern disposition of the cases are the same – even according to GCSD.

16 Likewise, both actions involved similar substantive matters, many of which have
 17 been heard by this Court in the prior actions. *GCSD II* directly addressed critical issues
 18 now raised by SNW in its Motion to Vacate the Arbitration Award. For example, SNW
 19 contends that condemnation took GCSD’s right to continue arbitration under the 2003
 20 Agreement and that the Tribe terminated the arbitration. This issue was raised in the
 21 parties’ numerous briefs and considered by Judge Campbell at oral argument in *GCSD II*.
 22 *See* Defendants’ Opposition to Motion for TRO in *GCSD II* at 21:17-24 (“ . . .
 23 condemnation of GCSD’s contractual interest in the 2003 Agreement rendered arbitration
 24 moot. . .”); **EXHIBIT 2**, at 51:22-52:5 and 61:21-62:5 (Mr. Tratos: “[The Tribe has]
 25 retrospectively eliminated the 14 causes of action in the existing arbitration.”).

26 Additionally, in *GCSD II*, GCSD contended that SNW’s refusal to arbitrate was
 27 evidence of bad faith supporting a denial of tribal court jurisdiction. *See* 03/14/12 *GCSD*
 28 *II*, Bad Faith Hearing Transcript, at 24:12-25:4, and 48:20-50:22, attached as **EXHIBIT**

1 3. In contrast, the Tribe argued that GCSD has no legal basis to arbitrate because no
 2 federal court had ordered arbitration. This Court rejected GCSD's bad faith argument
 3 based upon its reading of the 2003 Agreement and its interpretation of a prior Hualapai
 4 Tribal Court Order regarding arbitration under the 2003 Agreement:

5 [Judge Campbell]: My understanding is -- well, I've read it.
 6 This agreement between the plaintiff and the tribal
 7 corporation says our problems will be resolved in arbitration
 8 and the sole court that can order arbitration is the United
 9 States District Court for the District of Arizona. You moved
 10 to compel arbitration in tribal court. And my understanding is
 11 tribal court said, we can't do it; it says here in your agreement
 12 it has to be in federal court; go to federal court and get them
 13 to compel arbitration. That doesn't sound to me to be an act of
 14 bad faith because the contract in fact said that.

15 See **EXHIBIT 3**, at 49:2-49:12. In other words, Judge Campbell's familiarity with
 16 matters raised and considered in *GCSD II* are now directly relevant to the instant
 17 Arbitration Action.

18 Quite simply, GCSD now selectively forgets what it deemed critical aspects of its
 19 Motion for TRO and Complaint for Declaratory and Injunctive Relief in *GCSD II*. Yet,
 20 both GCSD's Motion for TRO and its Complaint for Declaratory and Injunctive Relief
 21 comprise almost 100 pages worth of pleadings (and several hundred pages worth of
 22 exhibits thereto) that cast the AAA arbitration dispute, the 2003 Agreement, and the
 23 Tribe's condemnation of the 2003 Agreement as inter-related circumstances requiring
 24 resolution before this Court. See generally, Motion for TRO (*GCSD II*), at 3:24-14:6,
 25 20:22-22:15, 30:10-21; Complaint for Declaratory and Injunctive Relief (*GCSD II*), at
 26 1:1-4:24, 33:7-34:8, 37:10-38:6. Specifically, GCSD requested declaratory and
 27 injunctive relief from this Court to find that SNW was required to participate in the AAA
 28 arbitration under the 2003 Agreement and to compel SNW to participate in arbitration.
 Motion for TRO (*GCSD II*), at 30:10-21. SNW and the Tribe supplied briefing in
 opposition to that specific request raising the same objections now raised in support of its
 Motion to Vacate the Arbitration Award. However, this Court, after considering a
 number of arguments, denied GCSD's request to compel SNW to participate in

1 arbitration. *See* Judge Campbell's 03/26/12 Amended Order in *GCSD II*, at 15. Thus,
 2 *GCSD I*, *GCSD II*, and this instant Arbitration Action are substantially related and
 3 involve similar issues already considered at length by Judge Campbell.

4 **III. GCSD'S ARGUMENT THAT THESE ACTIONS DO NOT INVOLVE THE**
 5 **SUBSTANTIALLY SAME PARTIES IS BASELESS.**

6 In a strategy aimed at avoiding the Tribe's sovereign immunity from suit in federal
 7 court, GCSD employed the doctrine of *Ex Parte Young* in *GCSD II* to sue the members of
 8 the Tribal Council on the allegation they exceeded their constitutional powers.² GCSD's
 9 pleadings, as well as the transcripts from both the TRO and the bad faith hearings,
 10 demonstrate that GCSD did not treat the individually-named tribal members as anything
 11 but surrogates for the Hualapai Tribe. Indeed, this appears to have been this Court's
 12 perception as well. *See* 03/26/12 Amended Order in *GCSD II*, at 1 ("Plaintiff asks this
 13 Court to declare that the Hualapai Indian Tribe has no authority to condemn Plaintiff's
 14 private contract rights. . ."). In short, the parties between all actions are substantially
 15 similar in substance, if not in form.

16 **IV. JUDICIAL ECONOMY IS UNDENIABLE GIVEN THE RECORD OF**
 17 **FACTS AND MATTERS CONSIDERED BY JUDGE CAMPBELL.**

18 GCSD's sole support of its contention that judicial economy will not be promoted
 19 and no duplication of labor will occur is based on its argument that the cases do not
 20 involve similar events and/or transactions, legal issues, or parties. As discussed above,
 21 GCSD's contention is not true. The parties' pleadings and the transcripts in *GCSD II* will
 22 be utilized by both sides to support arguments made in the instant Arbitration Action. It
 23 is also likely that the same documents and court records will be utilized to determine the
 24 scope and meaning of key provisions of the 2003 Agreement that Judge Campbell has
 25 previously considered in *GCSD II*. SNW respectfully believes that Judge Campbell will
 26 have far more familiarity with issues to be addressed in the instant Arbitration Action.
 Likewise, Judge Campbell is familiar with the background facts and circumstances

27 ² The case was stayed before the deadline for Defendants to file any responsive pleadings
 28 to GCSD's Amended Complaint. Therefore, issues pertaining to the Court's jurisdiction
 over the Tribal Defendants were never raised or considered by the Court.

1 leading up to arbitration and throughout the Tribe's condemnation of GCSD's interests in
2 the 2003 Agreement. This familiarity will likely be invaluable in considering the parties'
3 arguments with regard to vacating the arbitration award. Judge Campbell's familiarity
4 can only increase judicial efficiency, and will most certainly avoid duplication of labor.

5 **V. CONCLUSION.**

6 Based on the foregoing, the record supports the conclusion that transferring the
7 instant Arbitration Action to Judge Campbell is in accordance with LRCiv 42.1.

8 RESPECTFULLY submitted this 15th day of October, 2012.

9
10 **GALLAGHER & KENNEDY, P.A.**

11 By: /s/ Jeffrey D. Gross

12 Glen Hallman

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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of October, 2012, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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By: /s/ Candice J. Cromer

Exhibit 1

Exhibit 1

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12 Attorneys for 'Sa' Nyu Wa, Inc.

9 **AMERICAN ARBITRATION ASSOCIATION**

10 GRAND CANYON SKYWALK
11 DEVELOPMENT, LLC, a Nevada limited
12 liability company,

13 Plaintiff,

14 vs.

15 'SA' NYU WA, INC., a Hualapai chartered
16 corporation,

17 Defendant.

AAA Case No. 76-517-Y-191-11-S1M

18 **ANSWER TO GCSD'S
19 ARBITRATION COMPLAINT
20 AND
21 SNW'S NOTICE OF INTENT TO
22 ASSERT COUNTERCLAIMS
23 (Under Protest)**

19 'Sa' Nyu Wa, Inc., a tribally-chartered corporation ("SNW"), **WITHOUT**
20 **WAIVER OF ITS OBJECTIONS TO THIS ARBITRATION AS PREMATURE**
21 **AND UNAUTHORIZED**, for its Answer to Grand Canyon Skywalk Development,
22 LLC's ("GCSD" or "Manager") Arbitration Complaint, admits, denies, and alleges:
23

24 1. Answering the allegations of Paragraph 1, SNW admits that the 2003
25 Development and Management Agreement, as amended (the "2003 Agreement,"
26

Exhibit 2

Exhibit 2

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Grand Canyon Skywalk Development, LLC,)
Plaintiff,) CV 12-08030-PCT-DGC
vs.) Phoenix, Arizona
'Sa' Nyu Wa, Inc., et al.,) February 24, 2012
Defendants.)

BEFORE: THE HONORABLE DAVID G. CAMPBELL, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TEMPORARY RESTRAINING ORDER HEARING

Official Court Reporter:
Patricia Lyons, RMR, CRR
Sandra Day O'Connor U.S. Courthouse, Suite 312
401 West Washington Street, SPC 41
Phoenix, Arizona 85003-2150
(602) 322-7257

Proceedings Reported by Stenographic Court Reporter
Transcript Prepared with Computer-Aided Transcription

1 of the United States Indian tribes were taking property and
2 given just compensation. I don't know anything about that.
3 But we certainly know in modern times, no tribe has ever tried
4 to assert that.

5 And if you look at what *Montana* has to say, I would
6 argue if they take a non-Indian's property through no due
7 process, through eminent domain, it is inconsistent with their
8 domestic status. There is no express congressional delegation
9 that allows them to do such a thing.

10 And on the contrary, the only delegation here is that
11 the IRA, which says you do business by a corporation, you've
12 got to play by those rules. A corporation enters into a
13 contract, then you resolve it through the dispute --
14 resolution mechanism in the contract. Or if you get to the
15 point where you can't do business any longer, you take the
16 other kinds of remedies that are there.

17 We have something like -- and we have a chart we can
18 show you, and I'd like to turn it over, with your permission,
19 sir, to Mr. [March chad owes, because this point has not been
20 made yet, sir, in the oral argument. It's not just they took
21 our property, which answers a lot of the questions that were
22 here. You know, it's not hypothetical. They took our
23 property. The property has been taken. They took away now
24 all our rights of action.

25 We had all sorts of rights of action, more than a

1 dozen, that were being cited in the arbitration. And they all
2 had value to them. Now, we may or may not prevail on
3 arbitration, sir, but it's not only they took the Skywalk
4 interest; we have legal rights of action that have been
5 eviscerated by what it is they've done here.

6 I'm not even, according to their logic, allowed to
7 stand here, because they fired me. And I have never been
8 fired by a job until I was fired by the Hualapai tribe,
9 because I represent a company whose contract they took, and
10 they purported to fire me. And Mr. Tratos and Ms. Overton,
11 we're not actually, under their theory, allowed to stand here
12 in front of you. That's how extreme the situation has gotten.

13 And I'd like to, with your permission, let Mr. Tratos
14 talk a little bit about the other property rights they've
15 taken from us as a result of this action. Because it does go
16 to irreparable harm, it goes to bad faith.

17 I mention also that while I looked at Judge
18 Yellowhawk's order when I was in tribal court last Friday, it
19 doesn't say anything about March 23rd; it doesn't have a date
20 in it. It's news to me that we're going to be there in March.
21 Last time we went through this route, it took a couple of
22 months to get a judge pro tem appointed.

23 I just mention that we really need to understand the
24 full scope of what's being taken here, because it is
25 unprecedented for a tribe to try to take something through

18:54 1 Exclusion has always been the authority of a tribe to
2 decide who comes on their land and who leaves. Tribal members
3 are banished because they commit crimes, and so they're asked
4 to leave. And sometimes non-Indians don't behave and they're
19:08 5 asked to leave. And the tribal government can do that. It's
6 been recognized in the various treaties, the form treaties
7 from 1868, a lot of other bases, that tribes have that power.

8 But the power to physically exclude somebody from
9 tribal lands in this case was exercised the moment that the
19:23 10 tribe decided to enter into a contract through a corporation
11 it created. That -- at that time, according to the *Merrion*
12 case, that's when the power was exercised. And all of this is
13 a side show. All of this is a side show at this point.

14 This is an arbitration action. We should be back in
19:41 15 arbitration because that's what the parties agreed to, and we
16 have to settle our disagreements through that process that
17 both sides signed up for. And for them to come in and say
18 we're just going to take your property and fire your lawyer,
19 and as Mr. Tratos can lay out in great detail and as you saw
19:59 20 in the supplemental factual statement, they have taken our
21 property. It's not as if there isn't ongoing, significant,
22 serious damage.

23 You can't take anybody's property through the power
24 of exclude. It doesn't say a tribe can take away your
20:15 25 property with no process. It just says that if they don't

1 as to the size of the building, that, in fact, there has been
2 a media campaign mounted by the tribe's PR firm to discredit
3 Mr. Jin in order to justify the condemnation based upon the
4 false assertion he has breached his contract.

5 I believe she can testify that those obligations were
6 never his and that, in fact, the tribe has engaged a PR firm
7 to specifically discredit him. That's what I believe she will
8 testify to.

9 THE COURT: All right. Before I decide if we need
10 that, there was something else that Mr. Eid said you wanted to
11 present in terms of the rights under the contract.

12 MR. TRATOS: Yeah. In particular, we point this out
13 in the supplemental material, but Mr. Hallman has done three
14 specific things I would call to the Court's attention. On the
15 same day that the taking of the Skywalk interest occurred, he
16 contacted the arbiter here in Phoenix who had ordered
17 documents be produced and he told the arbiter we stand in the
18 shoes of GCSD and now we dismiss with prejudice this action.

19 Now, on a prospective basis the tribe says we're now
20 going to manage the Skywalk.

21 What they have essentially done is saying the
22 disputes and money owed in the past doesn't matter any more.
23 We're going to not only prospectively manage, but they have
24 retrospectively eliminated the 14 causes of action in the
25 existing arbitration.

1 How, in an action of taking, can they essentially
2 rewrite history and essentially say all of the moneys that
3 were owed, all of the moneys we didn't pay, all the moneys we
4 didn't account for don't matter anymore? And that's what they
5 have done.

6 The other things he did were as follows: He then
7 reached out to vendors who essentially were issued third-party
8 subpoenas by the arbiter who had issued them, Moss Adams and
9 Snell Wilmer, which we had asked for key critical documents
10 for, and those particular key critical documents, they had
11 been issued a subpoena by the arbiter to produce them, they
12 were told the arbitration's over, you don't need to produce
13 them. Snell Wilmer called us saying we've been told not to
14 produce them. Moss Adams sent us an e-mail saying we're not
15 to produce them.

16 Essentially, the contract between Grand Canyon
17 Skywalk and SNW is the arbitration, this contract becomes the
18 arbitration. They've essentially come through and said all
19 these rights, all of the things you claim don't matter
20 anymore. We can eliminate any right you had previously.
21 Retroactively as well as prospectively.

22 I've never seen any conduct like that any time
23 practicing law where you can essentially say "we can do that."

24 And as Mr. Eid pointed out earlier, the last thing
25 they did was they said, oh, by the way, since we're GCSD now,

Exhibit 3

Exhibit 3

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Grand Canyon Skywalk Development, LLC,)
Plaintiff,) CV 12-08030-PCT-DGC
vs.) Phoenix, Arizona
'Sa' Nyu Wa, Inc., et al.,) March 14, 2012
Defendants.)

BEFORE: THE HONORABLE DAVID G. CAMPBELL, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MOTION HEARING

Official Court Reporter:
Patricia Lyons, RMR, CRR
Sandra Day O'Connor U.S. Courthouse, Suite 312
401 West Washington Street, SPC 41
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(602) 322-7257

Proceedings Reported by Stenographic Court Reporter
Transcript Prepared with Computer-Aided Transcription

1 THE COURT: Cannot do what?

2 MR. EID: A judge is not permitted in an instance
3 like that to be able to accept a finding without any kind of
4 independent analysis or inquiry.

5 THE COURT: Are you talking about his signing of the
6 TRO orders?

7 MR. EID: Yes. Which was based --

8 THE COURT: So you're saying those are bad faith --

9 MR. EID: Yes.

10 THE COURT: -- independent of the disqualification
11 issue?

12 MR. EID: Yes, sir. And the resolution itself, it
13 asserts a series of grounds why we were in breach of contract
14 from the standpoint of the Hualapai tribe. And that was an
15 issue, obviously, in the arbitration. I took that issue with
16 Mr. Tratos and we went to tribal court. The ruling of the
17 tribal court after we exhausted was, okay, you go to
18 arbitration in federal court. Enforceable in federal court.
19 That's what we did.

20 The same tribal court said it did not have
21 jurisdiction there. A year later they say they do have
22 jurisdiction. They have jurisdiction to take the same
23 allegations, very same allegations we were somehow in breach
24 of contract, and use that as a basis -- without any
25 independent judicial analysis, and to use that as a basis for

1 issuing a TRO.

2 THE COURT: But I thought the basis for their
3 decision not to order arbitration was that your agreement said
4 that could only be done by a federal court.

5 MR. EID: Well, even if that's the case, it is not --
6 if I might be able to explain, it is not acceptable in the
7 District of Arizona, and there's a case on this point, for
8 there to be a completely unsupported finding that, in this
9 case, the tribal council made when it's been acting in bad
10 faith that a judge accepts with no independent analysis or
11 action. There's no hearing. We had no hearing to be able to
12 present or contest facts on that issue. The judge could have
13 found our facts were wrong, but we never had the opportunity
14 to be heard. That's the basic problem.

15 If you don't have any opportunity to be heard, it's
16 bad faith. It's -- the remedy in the US Supreme Court, remedy
17 in the District of Arizona, remedy in the Arizona supreme
18 court and the cases that we cite has always been vacatur, it's
19 such a serious violation.

20 I would also tell you, sir, that we know now, as
21 Mr. Tratos said, they had two resolutions on March 12th.

22 THE COURT: Before we go to those, you were going to
23 talk, I think, at the beginning, about what law says that we
24 look beyond --

25 MR. EID: Yes.

1 stopped the condemnation.

2 I know you say there's a constitutional right to
3 condemn. That's another legal argument. But it was then
4 reinstated after two members were suspended.

5 So that's all, I think, been established through the
6 dialogue. And that seems to me to be about, setting aside for
7 a minute the expert witness on the independence of the tribal
8 court, that's about 90 percent of the bad faith facts you all
9 wanted to present through the witnesses.

10 MR. TRATOS: That's correct.

11 THE COURT: I've also had arguments on the scope of
12 the bad faith exception from Mr. Eid that I went through four
13 different points that he made. I want to give Mr. Gross a
14 chance to address that because I think that's a very important
15 preliminary question, and we've done some additional research
16 beyond your memos and have found some cases and we've been
17 wrestling with that.

18 MR. TRATOS: Might I add two points additionally?

19 THE COURT: Sure.

20 MR. TRATOS: On the bad faith. Our belief is that
21 when the tribal court had the opportunity to take jurisdiction
22 about the dispute, the 2003 agreement, and it rejected
23 jurisdiction, that it was then bad faith to later come in and
24 accept jurisdiction on the --

25 THE COURT: Let me tell why you that argument hasn't

persuaded me so far, and you can point out where I'm wrong.

My understanding is -- well, I've read it. This agreement between the plaintiff and the tribal corporation says our problems will be resolved in arbitration and the sole court that can order arbitration is the United States District Court for the District of Arizona.

You moved to compel arbitration in tribal court. And my understanding is tribal court said, we can't do it; it says here in your agreement it has to be in federal court; go to federal court and get them to compel arbitration.

That doesn't sound to me to be an act of bad faith because the contract in fact said that.

When they then take jurisdiction over this new matter, it's not a motion to compel arbitration, it's jurisdiction under a new ordinance passed by the tribal council. That is a different kind of a case than the motion to compel arbitration.

So the fact that they assumed jurisdiction in the second and not in the first hasn't looked to me like bad faith.

Point out where I'm wrong.

MR. TRATOS: You're wrong only to this extent: The premise of assuming jurisdiction was based solely on the resolution 15-209 in which the tribal council makes specific factual allegations of the breach of the agreement which the

1 tribal judge then accepts as the basis for issuing the
2 temporary restraining order and now we have, essentially, not
3 the judge making a decision but the tribal council making a
4 decision and tribal council -- if I could finish?

5 THE COURT: Go ahead.

6 MR. TRATOS: It was tribal council who was
7 essentially stating here's the facts of the case, you, judge,
8 must accept them.

9 THE COURT: Okay. That's a different argument.
10 That's not saying that it was bad faith to reject jurisdiction
11 in the motion to compel arbitration and yet accept it in this
12 case. That's not the argument. The argument is that the
13 judge shouldn't have signed an order based on factual findings
14 without giving you an opportunity to address it. That's a
15 different argument --

16 MR. TRATOS: Bill of attainder argument and we think
17 that is a bad faith argument.

18 THE COURT: Okay. But that's different than the
19 argument you made about them denying jurisdiction and then
20 accepting it. Right?

21 MR. TRATOS: It's technically different, yes, Your
22 Honor.

23 THE COURT: Okay. You wanted to make a second point.

24 MR. TRATOS: Second point. We believe it is
25 inherently bad faith when we are told there is going to be