



**MARTHA L. KING**

1900 Plaza Drive

Louisville, CO 80027

Telephone: (303) 673-9600

Direct: (303) 815-1712

Fax: (303) 673-9155

E-Mail: [mking@ndnlaw.com](mailto:mking@ndnlaw.com)

[www.ndnlaw.com](http://www.ndnlaw.com)

September 27, 2013

**VIA ECF SYSTEM DELIVERY**

Circuit Clerk

United States Court of Appeals for the Tenth Circuit

The Byron White U.S. Courthouse

1823 Stout Street

Denver, Colorado 80257

**Re: *Cheyenne and Arapaho Tribes v. First Bank and Trust Company*  
Case No. 13-6117**

Dear Circuit Clerk:

In accordance with Fed. R. App. P. Rule 28(j), we notify you of pertinent and significant authority which has come to our attention.

On September 24, 2013, the Supreme Court of Oklahoma issued an opinion in *Sheffer v. Buffalo Run Casino*, 2013 OK 77, overruling *Bittle v. Bahe*, 192 P.3d 810, a case heavily relied on by First Bank and Doug Haught<sup>1</sup>. *Bittle* was a decision in which the Supreme Court of Oklahoma held that tribes implicitly waive their sovereign immunity when they contract in a state and the contract contains a provision whereby the parties agree to be bound by the state's laws. The *Bittle* court applied a balancing test and concluded that the state's interests in having its commercial transactions work properly outweighs any interests the tribe might have. Doug Haught felt so strongly about it he included in his state court order:

I have reviewed *Bittle v. Bahe*, 192 P.3d 810. It was a part of the analysis in that case that the tribe agreed to be bound by state law when they applied for a liquor license. In the present case, the tribe agreed to be bound by state law when they opened this account. In *Bittle*, the tribe acknowledged

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<sup>1</sup> Ans. Br. 31-32; Aplt.App., vol. 6, 1794, 1796, 1797; Aplt.App., vol. 7, 1916-17, 2016, 2040, 2095-96.

that the casino's agreement to be bound by state law constituted a waiver of any immunity to the subject matter jurisdiction of the Oklahoma courts when the state initiated an action on a violation.

Aplt.App., vol. 7, 2095. He continued, "It is an element of the preemption analysis discussed in *Bittle* that all citizens must be assured that they have access to the court system." *Id.* at 2096.

*Sheffer* overruled *Bittle* and held Congress has to expressly abrogate sovereign immunity or the tribe has to expressly and unequivocally waive its immunity for waiver to apply in a case. Where neither is present, there is no waiver and there is no state court jurisdiction.

Sincerely,

FREDERICKS PEEBLES & MORGAN LLP

/S/ MARTHA L. KING

(Digital)

Martha L. King, OK Bar No. 30786

Rebecca Rizzuti

FREDERICKS PEEBLES & MORGAN LLP

1900 Plaza Drive

Louisville, Colorado 80027-2314

Telephone: (303) 673-9600

*Attorneys for the Cheyenne and Arapaho*

*Tribes' Executive Branch, Appellant-Plaintiff*

CHEYENNE AND ARAPAHO TRIBES

/S/ Martha L. King for CHARLES B. MORRIS

(Digital)

Charles B. Morris, OK Bar No. 16019

CHEYENNE AND ARAPAHO TRIBES

P.O. Box 32

Concho, Oklahoma 73022

Telephone: (405) 422-7421

*Attorney General of the Cheyenne and  
Arapaho Tribes, Appellant-Plaintiff*

## CERTIFICATE OF COMPLIANCE

### Section 1. Word count

As required by Fed. R. App. P. 32 (a)(7)(c), I certify that this Reply Brief is proportionally spaced and contains 337 words.

Complete one of the following:

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By: /s/ MARTHA L. KING  
(Digital)

By: /s/ Martha L. King for CHARLES B. MORRIS  
(Digital)

**CERTIFICATE OF DIGITAL SUBMISSION  
AND PRIVACY REDACTIONS**

I hereby certify that a copy of the foregoing **LETTER TO THE CIRCUIT CLERK** as submitted in Digital Form via the court's ECF system, is an exact copy of the written document filed with the Clerk and has been scanned for viruses with the Symantec AntiVirus Corporate Edition version 10.0.0.359, Virus Definition File Dated: 3/1/2011 rev. 6 and, according to the program, is free of viruses. In addition, I certify all required privacy redactions have been made.

By: /S/ KELLY H. BASINGER  
(Digital)  
Litigation Legal Secretary

### CERTIFICATE OF SERVICE

I hereby certify that the foregoing **LETTER TO THE CIRCUIT CLERK** was served on this 27th day of September, 2013, via the Court's CM/ECF system which will send notification of such filing to all parties of record below.

Scott Meacham, OBA #13216  
Adam C. Hall, OBA #21202  
Melanie Wilson Rughani, OBA #32041  
CROWE & DUNLEVY, P.C.  
20 North Broadway, Suite 1800  
Oklahoma City, Oklahoma 73102-8273  
Telephone: (405) 235-7700  
Facsimile: (405) 239-6651  
[Scott.meacham@crowedunlevy.com](mailto:Scott.meacham@crowedunlevy.com)  
[John.Thompson@crowedunlevy.com](mailto:John.Thompson@crowedunlevy.com)  
[Melanie.Rughani@crowedunlevy.com](mailto:Melanie.Rughani@crowedunlevy.com)  
*Attorneys for Defendant-Appellee*  
*First Bank And Trust Company*

M. Daniel Weitman, OBA #17412  
Assistant Attorney General  
Oklahoma Attorney General's Office  
Litigation Division  
313 N. E. 21st Street  
Oklahoma City, Oklahoma 73105  
Telephone: (405) 521-3921  
Facsimile: (405) 521-4518  
[Dan.Weitman@oag.ok.gov](mailto:Dan.Weitman@oag.ok.gov)  
*Attorney for Defendant-Appellee*  
*Doug Haught*

/S/ KELLY H. BASINGER  
(Digital)  
Litigation Legal Secretary