

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

COMANCHE NATION, a federally)
recognized Indian Tribe and NUMUNU)
PAHMU, a Limited Liability Company,)
)
Plaintiffs,)
)
v.) Case No. CIV-13-1228-C
)
GOVERNOR MARY FALLIN and THE)
STATE OF OKLAHOMA,)
)
Defendants.)

**PLAINTIFFS' COMPLAINT AND APPLICATION
TO CONFIRM ARBITRATION AWARD**

Plaintiffs, the Comanche Nation and Numunu Pahmu, LLC, (collectively "Plaintiffs"), pursuant to 9 U.S.C. § 9, respectfully petition this Court for an Order of Judgment confirming the November 18, 2013 interim emergency award of the American Arbitration Association ("AAA") Arbitrator Patrick Irvine (hereafter "Arbitration Order," Exhibit 1 hereto). The Arbitration Order grants Plaintiffs emergency injunctive relief in *Comanche Nation, Numunu Pahmu, LLC, & Tobacco Retailers Licensed by the Comanche Nation Tax Commission v. Governor Mary Fallin & State of Oklahoma*, No. 71-181-639-13, American Arbitration Association. In support of this application and petition, Plaintiffs state as follows:

Parties

1. Plaintiff the Comanche Nation is a federally recognized Indian and sovereign tribal government with jurisdictional interests and territory throughout Southwestern Oklahoma. Plaintiff maintains its capital complex near Lawton, Oklahoma.

2. Plaintiff Numunu Pahmu is a Limited Liability Company chartered under Comanche Nation law, wholly owned and operated by the Comanche Nation, with offices in Lawton, Oklahoma. It is organized for the purpose of tobacco and other sales to provide employment opportunities for Comanche Nation citizens, as well as other Native Americans, and to provide government revenue for essential government purposes.

3. Defendant Governor Mary Fallin is the elected executive branch representative of the State of Oklahoma with an office in the capital complex within Oklahoma City.

4. Defendant the State of Oklahoma (“State”) is a state government with its capital complex in Oklahoma City.

Jurisdiction and Venue

5. This Court’s jurisdiction is based on 9 U.S.C. § 9 and the parties’ arbitration agreement, set forth in ¶ 18(b) of an October 31, 2013 Compact attached hereto as Exhibit 2, and discussed in allegations below. The Comanche Nation adopted the October 31, 2013 Compact pursuant to a “most favored nations” clause within its own prior compact (dated June 26, 2008)

between itself and the State, which expressly provides that once such option is exercised the new compact's terms supersede those of the original compact.

6. Venue is proper under 9 U.S.C. § 9 and 28 U.S.C. § 1391(a). The arbitration award at issue was rendered in Oklahoma City, Oklahoma, and the parties' arbitration agreement provides that "any arbitral award issued pursuant to proceedings initiated under this section will be enforceable in a court of proper jurisdiction, for which purposes both consent to suit in federal district court having proper venue" See Ex. 2 ¶ 18(b).

7. Each party has waived immunity for the limited purpose of enforcing the provisions of the governing Compact. See Ex. 2 ¶ 18(c). The parties have further agreed "not to assert, directly or indirectly, any immunity to any action filed in accord with . . . ¶ 18 and agree[d] . . . not to raise the Eleventh Amendment to the United States Constitution or comparable defense to the validity of such waiver." See Ex. 2 ¶ 18(d).

Underlying Facts

8. The Comanche Nation and the State entered into a Tobacco Tax Compact on June 26, 2008 ("Original Compact"). The compact allows the Nation and its licensed retailers to sell cigarettes and other tobacco products at a reduced state sales tax rate, with both parties sharing the revenue generated from the tax.

9. The Original Compact initially prescribed it was to terminate on June 30, 2013 if either party gave the other written notice of intent not to renew it for

an additional 5-year term. The State gave such notice, however, the parties thereafter entered into two written extensions of the term of the Original Compact (on June 28, 2013 and October 1, 2013) which extended its term through October 31, 2013.

10. The parties negotiated throughout the late spring, summer, and part of the fall of 2013 regarding a Tobacco Compact with new terms. The Comanche Nation negotiated in good faith throughout the time period. The State represented that it had provided the Comanche Nation with the most favorable terms possible; however, on the eve of expiration of the Compact, the Comanche Nation learned the State had provided more favorable terms to several other Indian Nations, including the Chickasaw Nation, to the exclusion of the Comanche Nation. The State refused to extend the Original Compact further to allow the parties to meet and further negotiate similar terms.

11. The Original Compact provided that should another Indian Tribe become entitled to more favorable terms for the sales of tobacco by virtue of the execution of a new compact, the Nation, upon written notice to the State, could adopt such compact and all of its terms, which would supersede those of the Original Compact. Therefore, on October 31, 2013, the Comanche Nation wrote the State invoking this “most favored nations” provision to adopt the more favorable Tax Compact between the Chickasaw Nation and the State of Oklahoma dated October 31, 2013 (sometimes “Superseding Compact”). The

Superseding Compact terminates on December 31, 2023. Thus until December 31, 2023, the parties' relationship is governed by that Compact.

12. The Superseding Compact contains an arbitration clause providing that either party may seek arbitration of a dispute in relation to the Compact, "which arbitration shall proceed in accord with rules that substantially comport with the rules of the American Arbitration Association." See Ex. 2, ¶ 18(b). Remedies available through arbitration include injunctive and/or declaratory relief for the enforcement of the provisions of the Compact. *Id.*

13. The State expressly repudiated its obligation to perform under the Superseding Compact and then promptly began breaching it. The State allocated to the Nation and its retailers "black stamps" pursuant to 68 O.S. §349.1, a statute which subjects sales of cigarettes and other tobacco products by retailers licensed by non-compacting federally recognized tribes to the State's full state excise tax rate. 68 O.S. §349.1(A). The State treated the Nation as a non-compacting tribe pursuant to Okla. Stat. tit. 68, § 349.1(B)(2); non-compacting tribes are given a limited number of excise tax free or "black stamps" to distribute to retailers for the sale of tobacco on Indian land to tribal citizens tax free. *Id.*

14. The Nation's sales of tobacco products pursuant to compact bring hundreds of thousands of dollars in revenue to the Nation to fund essential governmental and social service programs for its members. The Nation's compact for division of tax revenues with the State at a reduced tax rate allows

small, tribal tobacco retailers to compete with larger chains. Absent interim relief, the economic viability of the Nation's tobacco retailers will be threatened or destroyed, and vital social services will go unfunded due to the lack of tax revenue. Absent immediate relief, the regular customers of the Nation's retailers will go elsewhere and the retailers will irreparably lose their customer base to competitors.

15. In accordance with the arbitration clause, Plaintiffs filed a demand for arbitration with the American Arbitration Association in Oklahoma City, Oklahoma, on November 11, 2013 and moved for Emergency Injunctive Relief pursuant to the governing AAA Rules for Commercial Arbitration.

16. On November 18, 2013, the arbitrator entered an Award granting Plaintiffs' Motion for Emergency Injunctive Relief and prohibiting the State from refusing to recognize and perform under the Superseding Compact, and from applying its tax laws pertaining to non-compacting tribes pending resolution of the parties' controversy. See Ex. 1, the Arbitrator's Award.

17. In ¶ 18(b) of the Amended Compact, the parties agreed that "any arbitral award issued pursuant to proceedings initiated under th[e] section [would] be enforceable in a court of proper jurisdiction" and both consented to suit in federal district court for such purposes.

18. The Federal Arbitration Act, 9 U.S.C. § 9, provides that if the parties have agreed for the court to enter judgment upon an award made pursuant to arbitration, any party may apply to the court for an order confirming the award.

Upon such application the Court “must grant such an award unless the award is vacated, modified, or corrected” for any of the narrow reasons prescribed within the Act. 9 U.S.C. § 9. Here, there are no grounds to correct, vacate or modify the Award under 9 U.S.C. §§ 10 or 11.

19. Interim arbitration awards, in addition to final awards, are eligible for confirmation when they “finally and definitively dispose[] of . . . separate independent claim[s].” *Blue Cross Blue Shield of Mich. v. Medimpact Healthcare Sys., Inc.*, No. 09-14260, 2010 WL 2595340, at *2 (E.D. Mich. June 24, 2010) (quoting *Island Creek Coal Sales Co. v. City of Gainesville*, 729 F.2d 1046, 1049 (6th Cir.1984), abrogated on other grounds by *Cortez Byrd Chips, Inc. v. Bill Harbert Constr. Co.*, 529 U.S. 193, 120 S.Ct. 1331, 146 L.Ed.2d 171 (2000)). Courts have found that an arbitrator ruling granting interim injunctive relief in instances like the present “qualif[y] as one that finally and definitely disposes of a separate independent claim” and are thus subject to confirmation. *Id.*; see also *Island Creek Coal Sales Co.*, 729 F.2d at 1049 (affirming district court’s observation that “[t]he interim award disposes of one self-contained issue, namely, whether [a party] is required to perform the contract during the pendency of the arbitration proceedings. Th[is] issue is a separate, discrete, independent, severable issue.” *Island Creek*, 729 F.2d at 1049 (internal quotation marks omitted)).

20. Furthermore, a district court’s powers to review an arbitration award are “extremely limited,” *Dominion Video Satellite, Inc. v. Echostar Satellite*,

L.L.C., 430 F.3d 1269, 1275 (10th Cir. 2005), and have been described as “among the narrowest known to law.” *Conoco, Inc. v. Oil, Chem. & Atomic Workers Int’l Union*, 26 F.Supp.2d 1310, 1315 (N.D. Okla. 1998) (quoting *Denver & Rio Grande Western Railroad Co. v. Union Pacific Railroad Co.*, 119 F.3d 847, 849 (10th Cir. 1997)). The rationale for restricting judicial review is that parties agree to arbitrate for the very purpose of avoiding the delay and expense of court proceedings. See *Dominion Video*, 430 F.3d at 1278; *Bowen v. Amoco Pipeline Co.*, 254 F.3d 925, 932 (10th Cir. 2001); *Conoco, Inc.*, 26 F.Supp.2d at 1315. “A court may only vacate an arbitration award for reasons enumerated under the Federal Arbitration Act, 9 U.S.C. § 10, or for a handful of judicially created reasons.... Outside of these limited circumstances, an arbitration award must be confirmed.” *Conoco, Inc.*, 26 F.Supp.2d at 1315, quoting *Denver & Rio Grande Western Railroad Co.*, 119 F.3d at 849.

21. In this instance, the arbitrator found it necessary, based on the risk of irreparable injury to Plaintiffs and little, if any, corresponding harm to the State, to enter an injunction pending resolution of the dispute. No reason for delay in confirming the arbitrator’s award exists, and Plaintiffs therefore ask that the Court enter an order confirming that award.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court confirm the Award of Emergency Injunctive Relief issued by the arbitrator and enter judgment in conformity with the Award.

Dated this 19th day of November, 2013.

Respectfully submitted,

s/Mike McBride

D. Michael McBride III, OBA #15431

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**LAWYERS FOR PLAINTIFFS
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2 Attachments, 64 KB

Dear Counsel,

Attached please find the Order and Interim Award issued by Judge Irvine.

Pursuant to R-13(a), please advise as to your respective party appointed arbitrators.

Sincerely,

Kate



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AMERICAN ARBITRATION ASSOCIATION

COMANCHE NATION, a federally recognized Indian Tribe, NUMUNU PAHMU, a Limited Liability Company, and tobacco retailers Licensed by the Comanche Nation Tax Commission,

Claimants,

v.

GOVERNOR MARY FALLIN and THE STATE OF OKLAHOMA,

Respondents.

AAA Case No. 71 181 00639 13

ORDER AND INTERIM AWARD

This emergency arbitration was initiated by the Comanche Nation and others (collectively, “Nation”) pursuant to a Demand for Arbitration dated November 10, 2013. The Nation alleges that Respondents Governor Mary Fallin and the State of Oklahoma (collectively, “State”) have breached the terms of a compact between the Nation and the State dated June 26, 2008 (“2008 Compact”), and the Tobacco Tax Compact between the Chickasaw Nation and the State of Oklahoma dated October 31, 2013 (“2013 Compact”), which the Nation asserts it adopted pursuant to Paragraph 13 of the 2008 Compact. The Nation also filed a Motion for Emergency Injunctive Relief pursuant to Rule 38, American Arbitration Association (“AAA”) Commercial Arbitration Rules (“AAA Rules”). Pursuant to Rule 38 of the AAA Rules, the AAA appointed the undersigned as emergency arbitrator.

On November 15, 2013, a telephonic hearing was held between the Arbitrator and counsel for the Nation – D. Michael McBride III, Jimmy K. Goodman, Harvey Ellis, and Paige A. Masters. Counsel for the State was notified of the telephonic hearing, but did not appear.

I. FACTS AND BACKGROUND.

The Nation and the State entered into the 2008 Compact to regulate sales of tobacco products by the Nation and its associated retailers, and to specify applicable tax rates and apportionment of tax receipts. The 2008 Compact was originally set to terminate on June 30, 2013, with automatic renewal unless either party gave notice that the compact would terminate at the end of the present term. The State gave such notice in December 2012. The parties engaged in negotiations for a new or amended compact for several months. To provide additional time for negotiations, two amendments agreed to by the Nation and the State extended the term of the 2008 Compact first to September 30, 2013, and later to October 31, 2013.

The 2008 Compact contained the following dispute resolution provisions:

10. (a) Any dispute arising in the interpretation or performance of this compact, which is not resolved by good faith negotiations within thirty (30) days, shall be subject to the sole and exclusive remedy of mandatory, binding arbitration. Any arbitration award shall be final, binding, conclusive, and not subject to appeal as to all issues arbitrated. The parties agree that nothing herein is intended to create a direct right of action against the State of Oklahoma or the Comanche Nation by any person or entity not a party hereto through court action, arbitration or otherwise for any matter related to the Compact, its interpretation or performance or nonperformance of the parties hereto, except as otherwise set forth herein.

(b) Arbitration may be invoked by either party following the negotiation period should the dispute remain unresolved. Notice of demand for arbitration shall be sent in writing to the other party. Arbitration shall be the exclusive means of resolving such disputes. When arbitration is invoked, a panel of arbitrators consisting of three (3) members shall be appointed. The arbitrators must be licensed attorneys. One shall be appointed by the Nation and one by the State. A third shall be appointed by the other two previously selected arbitrators. Once the first arbitrator is selected by the party invoking arbitration, the other party shall have no more than twenty (20) days from receiving notice of the first part's (sic) election to select its arbitrator. Within twenty (20) days of the selection of the second arbitrator, the two arbitrators selected by the parties will select the third arbitrator. Neutrality is

required of all arbitrators, and shall not be waived as to party selected arbitrators. The expenses of arbitration shall be born equally by the parties. The arbitration shall be conducted pursuant to the Commercial Arbitration Rules (“CAR”) of the American Arbitration Association (“AAA”) except those rules relating to administration of the arbitration by AAA, provided that nothing in the CAR or any other rules of the AAA shall be deemed to give State courts jurisdiction over any disputes arising from the Compact. The Arbitrators shall determine the applicable law to construe the relative rights and obligations of the parties. The panel of arbitrators may modify the aforesaid procedures and shall modify the procedures on joint motion of the parties, specify such substitute and/or additional procedures as they may deem necessary.

(c) Judgment upon the award rendered by the arbitrators may be entered in the United States District Court having jurisdiction thereof. The Nation hereby agrees to a limited waiver of its sovereign immunity from suit in federal court for the limited purpose of enforcement of the arbitration award and/or specific performance of the arbitration clause, and agrees to require that the Retailers waive any such immunity to which the Retailers may be entitled. The State hereby waives its sovereign immunity from suit, in federal court for the limited purpose of enforcement of the arbitration award and/or for specific performance of the arbitration clause. The terms of this arbitration agreement shall control over any inconsistent provisions in the arbitration law of the State or the Nation. Nothing herein shall be construed as an authorization by the Nation for disputes arising from this Compact to be heard in State Court for any purpose.

2008 Compact, pp. 5-6.

The 2008 Compact also contained the following paragraph, which the parties refer to as the most favored nations clause (“MFN Clause”):

13. Should another Indian Tribe become entitled to more favorable terms for sales of tobacco after the execution of this Compact by virtue of a court decision, arbitration, or execution of a new compact, other than in specifically designated areas along the Kansas, Arkansas or Missouri borders, such compact and all of its terms may be adopted by the Nation upon written notice to the State, and shall be incorporated into this Compact and shall supersede any inconsistent terms within this Compact.

2008 Compact, pp. 6-7. In a letter to Governor Fallin dated October 31, 2013, the Nation stated that it was invoking the MFN Clause and exercised its option to adopt the more favorable terms of the compacts entered into between the State and the Chickasaw Nation. In a letter dated November 4, 2013, the Nation alleged that the State was noncompliant with the 2008 Compact, as amended by the adoption of the 2013 Compact.

The 2013 Compact contains the following dispute resolution provisions:

18. In the event of any dispute over the interpretation or performance of this Compact while it is in effect, the following shall provide the parties' sole means of recourse and remedy against each other:

- a. 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 Nation and State shall meet within thirty (30) days of receipt of notice in an effort to resolve the dispute;
- b. Subject to the limitation set forth in paragraph (c) of this ¶ 18, either party may seek arbitration of the dispute, which arbitration shall proceed in accord with rules that substantially comport with rules of the American Arbitration Association (AAA). Such arbitration shall be conducted by a single arbitrator who will be selected by the parties; *provided*, that if the parties cannot agree on a single arbitrator, then each party will pick one (1) arbitrator, and those two (2) arbitrators shall select a third; the arbitration shall then be conducted by these three (3) arbitrators. The remedies available through arbitration are limited to injunctive and/or declaratory relief for the enforcement of the provisions of this Compact. The parties consent to the jurisdiction of such arbitration forum for such limited purposes and no other, and each waives immunity solely and exclusively with respect thereto. The parties further agree that any arbitral award issued pursuant to proceedings initiated under this section will be enforceable in a court of proper

jurisdiction, for which purposes both consent to suit in federal district court having proper venue; *provided*, that the State does not consent to suit in tribal court, and the Nation does not consent to suit in state court. The expenses of arbitration shall be borne equally by the parties.

2013 Compact, page 8 of 10.

As noted, both compacts refer to the AAA Rules, with the 2008 Compact stating that the arbitration “shall be conducted pursuant to the Commercial Arbitration Rules (“CAR”)” of the AAA “except those rules relating to administration of the arbitration by AAA.” The 2013 Compact says only that the “arbitration shall proceed in accord with rules that substantially comport with the rules of the” AAA.

The AAA Rules were amended effective October 1, 2013. A significant change to the amended rules was the addition of Rule 38, Emergency Measures of Protection, providing for a procedure for the appointment of, and action by, an emergency arbitrator if “immediate and irreparable loss or damage shall result in the absence of emergency relief.” Rule 38(a) states: “Unless the parties agree otherwise, the provisions of this rule shall apply to arbitrations conducted under arbitration clauses or agreements entered on or after October 1, 2013.” The new rule also recognizes the authority of the emergency arbitrator to rule on his/her own jurisdiction. Rule 38(d), referring to AAA Rule 7.

II. JURISDICTION.

By letter dated November 13, 2013, the Office of the Oklahoma Attorney General objected on behalf of the State to the administration of the arbitration by the AAA because (1) the State “has not agreed to the use of the AAA for arbitration of this potential dispute,” (2) the 2008 Compact “specifically excludes ‘rules related to administration of the arbitration by AAA,’” (emphasis in State’s letter), and (3) arbitration is premature because the 2008 Compact

required a thirty day negotiation period before arbitration could be invoked. After the Nation submitted a response to the State's letter, the State submitted a reply on November 14, 2013, reiterating its earlier objections and further asserting that (4) the arbitration clause in the 2008 Compact is controlling because the dispute between the parties is whether the Nation validly invoked the MFN clause, which is a part of the 2008 Compact, (5) under the terms of the 2008 Compact any dispute must be decided by three arbitrators, and (6) the Emergency Rules of Protection under Rule 38 do not apply because the dispute is over the terms of the 2008 Compact, which was entered before October 1, 2013, and the "State has not agreed to proceeding under this new rule in this dispute." In an email to AAA staff on November 14, 2013, the State informed the AAA that "the State will not participate in this matter any further."

Pursuant to AAA Commercial Arbitration Rule 7(a) an arbitrator has the authority to rule on his/her "own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement." Rule 38(d) incorporates Rule 7, and further provides that an arbitrator "shall resolve any disputes over the applicability of this Rule 38." Following these rules, the AAA properly referred the State's objections to jurisdiction to the Arbitrator for resolution.

Arbitration is based on contract and the agreement of the parties, so the question of jurisdiction in this matter depends on the agreement between the State and the Nation. There is no dispute that both the 2008 Compact and the 2013 Compact contain dispute resolution clauses that provide for arbitration. Both compacts provide a mechanism for selecting arbitrators. The 2008 Compact appears to exclude administration of the arbitration by the AAA, while the 2013 Compact makes no mention of administration. The 2013 Compact provisions apply if invocation of the MFN Clause incorporated them into the agreement between the Nation and the State.

The State contends that the MFN Clause was not properly invoked, so the 2013 Compact provisions do not apply. The State, however, presents no explanation or arguments to support its assertion. Consequently, the Arbitrator can only base a decision on the language of the agreements themselves, recognizing that both the State and the Nation agreed to those terms and are bound by them. The terms of the MFN Clause in the 2008 Compact impose no limits or preconditions on its exercise. As the 2008 Compact is written, the State has agreed that if another Indian tribe becomes entitled to “more favorable terms for sales of tobacco ... by virtue of ... execution of a new compact, ... such compact and all of its terms may be adopted by the Nation upon written notice to the State, and shall be incorporated into this Compact and shall supersede any inconsistent terms within this Compact.”¹

The State may make a more complete argument when this dispute is heard by a full arbitration panel, but for purposes of this emergency proceeding the plain language of the MFN Clause is conclusive. Pursuant to the terms of its agreement with the State, the Nation was entitled to invoke the MFN Clause. When the Nation did so, the dispute resolution provisions of the 2013 Compact were incorporated into its agreement and superseded any inconsistent terms in the 2008 Compact.

The 2013 Compact provides that any “arbitration shall proceed in accord with rules that substantially comport with the rules of the American Arbitration Association (AAA).” If the clause simply said that the AAA Rules apply or that the arbitration would proceed under the AAA Rules, AAA administration would be mandatory. AAA Rule 2 (“When parties agree to arbitrate under these rules, or when they provide for arbitration by the AAA, and an arbitration is

¹ By invoking the MFN Clause all terms of the other compact are adopted. Some of those terms may be less favorable to the Nation than the existing compact. Determining whether the new compact is more favorable appears to be within the Nation’s discretion under the terms of the MFN Clause.

initiated under these rules, they thereby authorize the AAA to administer the arbitration.”). The arbitration clause here does not go that far, saying only that the arbitration shall proceed under rules “that substantially comport” with AAA Rules. The Nation argues that “substantially comport” is the equivalent of “applies,” but the difference in wording makes the issue less than clear.

The Arbitrator finds that it is unnecessary to decide whether “substantially comports” is the equivalent of “applies.” The provision in the 2013 Compact requiring any arbitration to proceed under rules “that substantially comport” with AAA rules must be considered in the context of this emergency proceeding. As noted above, the AAA Rules now include provisions for emergency measures of protection that apply to all arbitration clauses or agreements entered on or after October 1, 2013, “[u]nless the parties agree otherwise.” The addition of Rule 38 to the AAA Rules was a significant change intended to provide for speedy relief when appropriate. See Summary of Changes, Commercial Arbitration Rules, attached as Exhibit B to the State’s letter dated November 14, 2013. To “substantially comport” with the current AAA Rules a procedure for appointing an emergency arbitrator must be available, otherwise the relief available under the Rules is illusory. Consequently, in the absence of some other procedure contained in the arbitration clause, the administration of the terms of Rule 38 by the AAA is the only way for the arbitration clause to be fully effective. Therefore, for purposes of this emergency proceeding, the parties have agreed to administration of the arbitration by the AAA.

The State argues that Rule 38 does not apply by its own terms because the only agreement it entered into with the Nation was the 2008 Compact, which occurred before October 1, 2013. Most of the changes to the AAA Rules apply to any arbitration instituted after their effective date. Rule 38, however, has its own effective date that is based on whether the

arbitration clause or agreement was “entered on or after October 1, 2013.” Thus, although Rule 38 will be included in all new agreements unless expressly excluded, parties to prior agreements will not be subject to them without their consent. The State’s position is that when it agreed to the application of the AAA Rules in 2008 it did not agree to the emergency measures, and the Nation cannot unilaterally incorporate those measures by invoking the MFN Clause.

The Nation, however, is not imposing anything on the State that it did not agree to after October 1, 2013. As noted above, the State entered into a compact with the Chickasaw Nation on or about October 31, 2013. That compact included the requirement that any arbitration proceed under rules that “substantially comport” with the AAA Rules, which at that point included Rule 38. If the Chickasaw Nation invokes its arbitration clause, it will be able to use the procedures of Rule 38. The Nation here is entitled to the same protections because the State effectively entered a new arbitration clause when it agreed to a clause that the Nation could adopt as its own through its invocation of the MFN Clause.

Similarly, the requirement in both compacts that disputes be decided by three arbitrators is not inconsistent with appointing a single arbitrator to address requests for emergency relief. The AAA Rules may apply even if the parties specify their own method of appointing arbitrators. Rule 13(a) (“If the agreement of the parties names an arbitrator or specifies a method of appointing an arbitrator, that designation or method shall be followed.”). As discussed above, the arbitration cannot proceed under rules “substantially comports” to the current AAA Rules unless there is a mechanism for appointing an emergency arbitrator, and absent any other agreement by the parties the only mechanism available is pursuant to Rule 38, which provides for a single arbitrator.

Finally, the State's objection that a demand for arbitration is premature because the thirty day negotiation period has not expired is based on the terms of the 2008 Compact. Even assuming the State is correct in its interpretation of the 2008 Compact, an issue that the Arbitrator need not decide, as explained above the controlling provisions for purposes of this proceeding are the terms of the 2013 Compact. Section 18(a) of the 2013 Compact provides that a party asserting noncompliance shall "first" serve written notice on the other party and the parties will meet within thirty days of notice to attempt to resolve the dispute. The arbitration provision in Section 18(b) does not, however, make passage of the thirty days a condition precedent to the demand for arbitration. The facts presented to the Arbitrator show that the Nation complied with the terms of Section 18 by serving a written demand on the State before seeking arbitration. No more is required. Moreover, to impose such a delay absent specific terms in the arbitration agreement is inconsistent with the requirement that the arbitration proceed under rules that "substantially comport" with the AAA rules, including the provisions for emergency measures.

For the above reasons, the Arbitrator finds that this proceeding is properly being administered by the AAA and that he has jurisdiction to consider the Nation's Motion for Emergency Injunctive Relief.

III. EMERGENCY INJUNCTIVE RELIEF.

Rule 38(e), AAA Commercial Arbitration Rules, provides:

If after consideration the emergency arbitrator is satisfied that the party seeking the emergency relief has shown that immediate and irreparable loss or damage shall result in the absence of emergency relief, and that such party is entitled to such relief, the emergency arbitrator may enter an interim order or award granting the relief and stating the reason therefore.

The Nation asserts that emergency relief is necessary to preserve the status quo pending a full arbitration of the dispute between the parties. The Nation states:

Having now repudiated the continued viability of the Compact, the State has implemented the imposition of State taxes on the Nation and its Retailers under the State's view of the much higher tax obligation that would subsist absent such agreement. This threatens loss of substantial and necessary revenue to the Comanche Nation, and more important, threatens the continued existence of the affected Retailers who may be driven out of business once their prices must reflect the higher tax obligations, depriving them of the favorable competitive position they have by virtue of the Compact's effect. If they are driven out of business by loss of reliable continued sales – the Comanche Nation will not be able to obtain effective arbitration. Any arbitration award will not be able to restore the Retailer's businesses and customers.”

Comanche Nation's Motion for Emergency Injunctive Relief, p. 4. The Nation points to the loss of needed tax revenues necessary for many programs and projects, funds used to employ citizens of the Nation, and sales by the Nation's retailers. The Nation notes that the remedies available to it under the compact are limited to injunctive and declaratory relief, with no compensatory damages, so even if ultimately successful it cannot recoup funds lost while an arbitration is pending.

The State has not disputed any of the Nation's claims as to irreparable harm, nor has it argued that it will be irreparably harmed if relief is granted and it is prohibited from collecting all State taxes due. In this case, the State is not being asked to treat the Nation in a unique way; only to treat it the same as the State has agreed to treat another Indian tribe.

Under these circumstances, the Nation has shown that immediate and irreparable loss or damage shall result in the absence of emergency relief.

Therefore,

IT IS ORDERED finding that the Arbitrator has jurisdiction over this emergency proceeding;

IT IS FURTHER ORDERED granting the Nation's Motion for Emergency Injunctive Relief and ordering the State to recognize, honor and implement the October 31, 2013 Compact

and all of its terms, including the tax apportionment formulas, and further that the State shall withdraw any tobacco stamps issued inconsistently with the terms of the 2013 Compact;

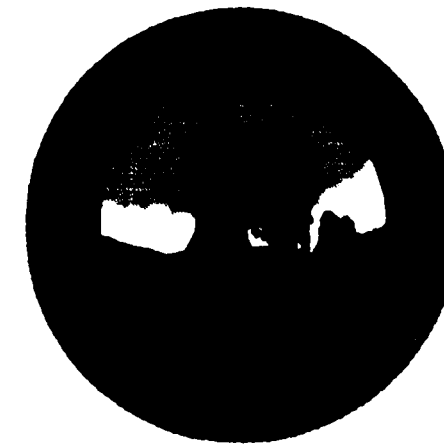
IT IS FURTHER ORDERED that this Order and Interim Award shall remain in effect pending the arbitration process and the issuance of a final award; and

IT IS FURTHER ORDERED that the costs associated with this emergency arbitration shall, pursuant to the specific terms of both compacts, be divided equally between the parties.

Dated: November 18, 2013.



Patrick Irvine
Arbitrator



**TOBACCO TAX COMPACT BETWEEN
THE STATE OF OKLAHOMA AND
THE CHICKASAW NATION**

FILED

OCT 31 2013

**OKLAHOMA SECRETARY
OF STATE**

ARTICLE I
PURPOSE AND INTENT OF PARTIES

WHEREAS, the Chickasaw Nation (hereinafter referred to as “Nation”), is a federally recognized Indian tribe¹ with inherent sovereign powers of self-government, as secured by and under federal law;

WHEREAS, the State of Oklahoma (hereinafter referred to as “State”) is an independent, sovereign state within the United States of America possessed of full powers of state government;

WHEREAS, both the State of Oklahoma and the Chickasaw Nation recognize that federal law designates each a sovereign with dominion over their respective governments, territories, and citizens; and that entry into this Compact is not intended nor shall it be construed to cause the sovereignty of either to be diminished; instead, entry into this Compact is intended to provide for the perpetuation, as modified herein, of a longstanding and mutually beneficial resolution of differences as between the Nation and State that arise under federal law and relate to their respective tax powers;

WHEREAS, the Nation and its citizens² are in possession of various tracts of land in its jurisdiction within the State, known and commonly referred to as “Indian Country”;

WHEREAS, the State, by and through the United States Supreme Court decision *Oklahoma Tax Commission vs. Citizen Band Potawatomi Indian Tribe of Oklahoma*, is authorized to collect state taxes on cigarettes and other tobacco products sold by tribes or tribal businesses to non-tribal citizens;

¹ “Federally recognized” tribe means any Indian tribe which has met the requirements established by the terms of the Indian Reorganization Act, 48 Stat. 984, as amended; the Oklahoma Indian Welfare Act, 49 Stat. 1967, as amended; or is one of those tribes listed in the Federal Register pursuant to 25 CFR Part 83 as recognized by and receiving services from the Bureau of Indian Affairs, as provided for in *Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs*, 58 Federal Register 54364 (October 21, 1993).

² “Citizen” means an individual who meets the citizenship requirements of the Nation as set forth in the Chickasaw Nation Constitution and Code or is listed on the tribal roll of the Nation as a citizen, see 25 CFR §81.1(i) (1996) and 25 C.F.R. §83.11 (1996).

WHEREAS, federal law recognizes and effectuates tribal governmental authority to pass laws and to govern in accord with them, which authority includes protections of tribal rights to, for example, sell cigarettes and other tobacco products to tribal citizens within Indian Country free from State taxation;

WHEREAS, both the State and the Nation recognize the financial, cultural, educational and economic contributions of each sovereign;

WHEREAS, both the State and the Nation recognize the need to maintain good Tribal/State governmental relations;

WHEREAS, Article 6, Section 8 of the Oklahoma Constitution vests the power and authority to conduct the business of the State with other sovereign states and with the United States to the Governor of the State of Oklahoma; and,

WHEREAS, for the purposes of federal law, the Oklahoma Constitution, and this Compact, the Chickasaw Nation does hereby constitute a sovereign state;

ARTICLE II
TERMS OF TAXATION ON SALE OF TOBACCO PRODUCTS

NOW, THEREFORE, the Chickasaw Nation, by and through its Governor, Bill Anoatubby, and the State of Oklahoma, by and through its Governor, Mary Fallin, do hereby enter into this Compact, the terms of such Compact to commence on November 1, 2013, for the mutual benefit of the Nation and the State, to-wit:

1. The provisions of this Compact shall establish and govern the rate of taxation and payment of taxes to the Nation and the State on the retail sales of cigarettes and other tobacco products in the Nation's Indian Country as defined by federal law, including 18 U.S.C. § 1151, hereinafter referred to as "Compact Jurisdiction," when said retail sales are made by the Nation. Nothing contained herein shall impair the ability of the Oklahoma Tax Commission to regulate cigarette manufacturers, importers, wholesalers, distributors, distributing agents, jobbers, or warehousemen ("Wholesalers"); *provided*, that such regulation shall not interfere with the rights of the Nation under this Compact.
2. The Nation agrees to:
 - a. Purchase cigarettes and tobacco products only from Wholesalers who are duly licensed by the State of Oklahoma and agree to allow verification of sales to state officials on a timely basis;
 - b. Maintain and provide the State with a current list of all (i) Nation's facilities which sell cigarettes and tobacco products and (ii) Wholesalers from which the Nation purchases cigarette and tobacco products; and

- c. Furnish to the Oklahoma Tax Commission the following information with respect to each of the Nation's facilities selling cigarettes and tobacco products:
 - i. Documentation or certification that each facility is located within the Compact Jurisdiction, such as trust land documentation;
 - ii. The location of offices; and
 - iii. A copy of any reports by any Wholesalers to the Nation documenting all sales of cigarettes and other tobacco products within the Compact Jurisdiction.
3. The State shall provide the following information from the Oklahoma Tax Commission to the Nation unless unavailable to the Oklahoma Tax Commission:
 - a. The name and address of Wholesalers licensed by the State;
 - b. The number and dollar amount of Compact stamps purchased by Wholesalers for sale to Nation;
 - c. A copy of any reports by Wholesalers to the State documenting wholesale or retail sales within the Compact Jurisdiction;
 - d. A current list of all Wholesalers providing the Nation with cigarettes or tobacco products; and
 - e. Any complaints, audit reports or concluded investigation findings related to the wholesale or retail sale of cigarettes or tobacco products within the Compact Jurisdiction; *provided*, that nothing herein authorizes the State to audit the Nation or to otherwise act in a manner inconsistent with ¶ 21 and ¶ 25.
4. The State and Nation stipulate and agree, for the sole purposes of implementing the provisions of ¶ 3 hereof, the Nation is and shall be considered by the State as (a) a "foreign country" for purposes of permissible disclosures to the Nation pursuant to 68 O.S. § 205.C.7 and (b) an "international authority" for purposes of 68 O.S. § 312.I.J.
5. The State and Nation further stipulate and agree, for the sole purposes of ¶ 3 hereof, that this Compact shall constitute a "contract" between the Nation and the Oklahoma Tax Commission for purposes of permissible disclosures to the Nation pursuant to 68 O.S. § 205.C.16. The Nation and the State, in consideration hereof, stipulate and agree that any information received from the records and files of the Oklahoma Tax Commission or the Nation will be treated and considered as confidential and privileged, to be used for the Nation's or the State's purposes in the administration and collection of the Compact Payment, state tobacco taxes and collection of tobacco manufacturer escrow payments under 37 O.S. § 600.21 through 600.23, and enforcement under 68 O.S. § 360.1 through 360.9, which are the subject of this Compact, and not be disclosed to any third party,

including, but not limited to any and all manufacturers, distributors and wholesalers of cigarettes and other tobacco products. A disclosure to a governmental agency for regulatory or enforcement purposes, to a court in response to a subpoena or other court order, for the State's collection of taxes or manufacturer's escrow payments and related actions, or to enforce the provisions of this Compact through arbitration or court action, shall not constitute a breach of this paragraph.

6. In lieu of any tax, the State and Nation agree that the Nation will make an indirect Compact Payment, as described herein, relating to all sales of cigarettes and tobacco products by the Nation within the Compact Jurisdiction. The State and Nation agree that the Compact Payment will be made without reference to the Tribal citizenship or non-citizenship status of the cigarette and tobacco products' ultimate purchasing consumer.
7. The Compact Payment for cigarette sales, which shall mean and include the sale of all rolled tobacco or any substitute therefor, wrapped in paper or any substitute therefor and weighing not to exceed three (3) pounds per thousand cigarettes, shall be equal to one-hundred percent (100%) of all State taxes in effect at the time of sale and otherwise applicable to the general sale of such product. The State and Nation agree that the Compact Payment shall be collected and distributed pursuant to ¶¶ 10, 11, and 13 of this Compact in accord with the following:
 - a. From November 1, 2013, through December 31, 2015:
 - i. State Portion
 1. The State shall receive thirty (30%) of all Compact Payment collected on cigarettes.
 - ii. Tribal Portion
 1. The Nation shall receive seventy (70%) of all Compact Payment collected on cigarettes.
 - b. From January 1, 2016, through December 31, 2016:
 - i. State Portion
 1. The State shall receive thirty-five percent (35%) of all Compact Payment collected on cigarettes.
 - ii. Tribal Portion
 1. The Nation shall receive sixty-five percent (65%) of all Compact Payment collected on cigarettes.
 - c. From January 1, 2017, through December 31, 2017:
 - i. State Portion

ii. Tribal Portion

1. The Nation shall receive fifty percent (50%) of all Compact Payment collected on other tobacco products.
9. The State shall use the State Portion of collected Compact Payments in accord with Oklahoma law, and the Nation shall use the Tribal Portion of collected Compact Payments at its exclusive discretion.
 10. In dividing monies pursuant to ¶ 7 and ¶ 8, all fees, administrative costs, and/or processing expenses shall be paid out of the State's share.
 11. The Nation will make the Compact Payment to the Wholesaler when it purchases cigarette and tobacco products for resale within the Compact Jurisdiction, which payment the Wholesaler will remit to the State in accord with ¶ 12. In consideration of the Nation's making of such Compact Payment and its agreement authorizing the Wholesaler to remit such payment to the Oklahoma Tax Commission, the State shall exempt all sales of cigarettes and other tobacco products to and by the Nation from any sales and excise taxes imposed by Title 68 of the Oklahoma Statutes.
 12. The State requires, and the Nation authorizes, all Wholesalers licensed by the State and selling cigarettes or tobacco products to the Nation to:
 - a. Provide sufficient documentation to the Nation and to the Oklahoma Tax Commission to demonstrate that the appropriate Compact Payments have been remitted. Such documentation shall be maintained by the Wholesalers for a period of at least five (5) years following distribution or sale of cigarettes or other tobacco products. If any Wholesaler selling cigarettes or tobacco products to the Nation fails to properly collect and remit the Compact Payment, the State may take necessary enforcement measures to ensure compliance with this paragraph by the Wholesaler, including, but not limited to, entry and inspection of tobacco-related records of the Wholesaler which are held within and/or without the Compact Jurisdiction.
 - b. The making of the Compact Payment on cigarettes shall be evidenced by use of a single joint stamp, sometimes known as the "unity rate" stamp, which Oklahoma licensed Wholesalers shall purchase from the Oklahoma Tax Commission and affix to packs of cigarettes sold to the Nation. The State shall bear the cost of affixing the single joint/unity rate stamp unless there is a mutual agreement otherwise. The Compact Payment shall be collected by the Oklahoma Tax Commission, by the sale of the single joint/unity rate stamp to Wholesalers.
 13. The Oklahoma Tax Commission shall rebate to the Nation the Tribal Portion of the Compact Payment receipts not yet distributed to the Nation not later than thirty (30) days after the end of each calendar month.

14. The State shall notify the Nation in writing when a distribution is to be withheld and/or reduced and must state the reasons therefor, justifications for which shall be—
- a. The invocation of the right to unilaterally terminate the Compact pursuant to ¶ 19;
 - b. Interference by the Nation in the collection of Compact Payment receipts; and
 - c. Receipt of duly authorized Court or Arbitration orders to withhold or enjoin payment.

Provided, that the State shall not make any unreasonable withholding or reduction of any rebate amount to which the Nation is entitled under this Compact.

15. The Nation agrees that the Compact Payment, provided for in this Compact, applies only to Nation's retail sales of cigarettes and/or other tobacco products to the consumer, and the Nation agrees not to sell or otherwise transfer cigarettes and/or other tobacco products stamped with the tax stamp authorized under this Compact to anyone other than the consumer. Except for transfers between facilities owned by Nation which are authorized to sell cigarettes and/or other tobacco products at the designated Compact Payment rate for each location under this Compact, the Nation agrees to refrain from selling or otherwise transferring cigarettes and/or other tobacco products to anyone other than the consumer at retail outlets located in the Compact Jurisdiction, including sales or transfers to other retailers outside the Compact Jurisdiction.

16. The State and Nation further stipulate and agree that:

- a. Unstamped cigarettes, counterfeited stamped cigarettes, mutilated stamped cigarettes, tobacco products and brands not approved (as reflected by publication on the Oklahoma Attorney General Website), and cigarettes and tobacco products on which a Compact Payment is required to be paid pursuant to this Compact and which has not been paid, are contraband.
- b. The Nation shall prohibit the possession or use of cigarette rolling vending machines for commercial purposes, which prohibition shall be at least as stringent as, 68 O.S. § 380, and apply to all persons, businesses, and/or other entities subject to the Nation's jurisdiction.

17. The Nation agrees not to sell, distribute, transport, solicit sales for, or in any manner deal with cigarette brands and tobacco products of a manufacturer who does not fully comply with the requirements of 37 Okla. Stat. §§ 600.21 through 600.23 and 68 Okla. Stat. §§ 360.1 through 360.9, and will only deal in tobacco products of complying manufacturers, as evidenced by the placement of the manufacturer's name and its product brands on the list of complying manufacturers and brands maintained on the Oklahoma Attorney General's website.

ARTICLE III
GENERAL PROVISIONS

18. In the event of any dispute over the interpretation or performance of this Compact while it is in effect, the following shall provide the parties' sole means of recourse and remedy as against each other:

- a. 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 Nation and State shall meet within thirty (30) days of receipt of notice in an effort to resolve the dispute;
- b. Subject to the limitation set forth in paragraph (c) of this ¶ 18, either party may seek arbitration of the dispute, which arbitration shall proceed in accord with rules that substantially comport with the rules of the American Arbitration Association (AAA). Such arbitration shall be conducted by a single arbitrator who will be selected by the parties; *provided*, that if the parties cannot agree on a single arbitrator, then each party will pick one (1) arbitrator, and those two (2) arbitrators shall select a third; the arbitration will then be conducted by these three (3) arbitrators. The remedies available through arbitration are limited to injunctive and/or declaratory relief for the enforcement of the provisions of this Compact. The parties consent to the jurisdiction of such arbitration forum for such limited purposes and no other, and each waives immunity solely and exclusively with respect thereto. The parties further agree that any arbitral award issued pursuant to proceedings initiated under this section will be enforceable in a court of proper jurisdiction, for which purposes both consent to suit in federal district court having proper venue; *provided*, that the State does not consent to suit in tribal court, and the Nation does not consent to suit in state court. The expenses of arbitration shall be borne equally by the parties.
- c. For purposes of this dispute resolution mechanism, each party hereto agrees that it shall not assert, directly or indirectly, any immunity to any action filed in accord with this ¶ 18 and agrees, furthermore, not to raise the Eleventh Amendment to the United States Constitution or comparable defense to the validity of such waiver; *provided*, that nothing herein shall be construed to authorize a money judgment, other than to fulfill a party's obligation hereunder, or for damages for a party's failure to comply with an arbitration decision requiring the payment of monies.

19. Either party may unilaterally terminate this Compact without cause by giving the other party one hundred eighty (180) days' written notice in accordance with ¶ 23 hereof. Such notice shall include a statement of basis for exercise of this right, and in the event of a party's invoking such right, the parties shall meet and confer at least twice within that one hundred

and eighty (180) day period for purposes of exploring opportunities for avoiding such termination.

20. This agreement shall terminate December 31, 2023. Nothing in this Compact shall prevent the parties by mutual written agreement from establishing a later termination date or otherwise modifying this agreement, and nothing in this Compact shall prevent either party from unilaterally terminating it pursuant to ¶ 19; *provided*, that unilateral termination shall not effect rights to performance, including payment, collection, and rebate of Compact Payment under ¶¶ 7 and 8, accruing prior to such termination.
21. By entering into this Compact, the Nation does not concede that the laws of the State of Oklahoma, including its tax and licensing laws, apply to the Nation or its citizens regarding activities and conduct within the Nation's Jurisdiction.
22. Neither party shall be deemed the drafter of this Compact in the event of any action to interpret its terms. Therefore, the rule of construction that in the case of ambiguity, the ambiguity is construed against the author is not applicable. Furthermore, any rule of construction of ambiguities either in favor of or against a State or Tribal government entity is not applicable to this Compact.
23. Notice shall be by United States mail, postage prepaid. Any notice required hereunder to the State shall be delivered to the Governor of the State of Oklahoma at 2300 N. Lincoln Blvd., Room 212 Oklahoma City, Oklahoma 73105-4890. Notification by the State shall be made by the Governor or designee in writing to the Governor of the Chickasaw Nation, 520 East Arlington Ada, Oklahoma 74820. Notification by the State and Nation shall also be filed with the Office of the Oklahoma Secretary of State.
24. The effective date of this Compact shall be November 1, 2013, when fully executed by all parties. The executed document shall be accompanied by a letter from counsel for the Nation certifying that it has been executed in compliance with tribal law and was obtained in accordance with all necessary legal and procedural requirements.
25. Nothing in this Compact shall be deemed to authorize the State to regulate the Nation's government or to interfere in any way with the Nation's election of its governmental officers. This Compact shall not alter tribal, federal or state civil adjudicatory or criminal jurisdiction.
26. In consideration herefor, the State and Nation each waive and hold the other harmless with respect to any claim or potential claim of breach, known or unknown, relating to the other party's performance or nonperformance under their prior Tobacco Tax Compact.
27. This Compact comprises the entirety of the agreement between the parties hereto on this subject matter. Any and all prior or contemporaneous representations, predictions, warranties or other inducements, however denominated, are merged within the terms of this Compact, and shall not survive its execution. There are no representations, promises, predictions, warranties, inducements or other agreements, however denominated, between

the parties other than as set forth herein. This Compact may not be amended or modified except by written agreement, approved and executed by the parties hereto.

IT IS AGREED:

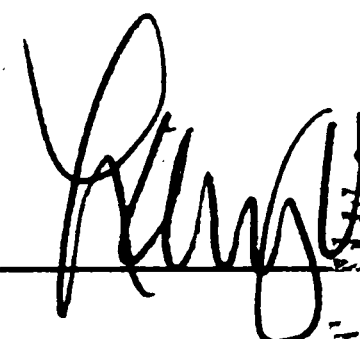

Each of the undersigned represents that they are duly authorized, and has the authority, to execute this agreement on behalf of the designated party.

STATE OF OKLAHOMA



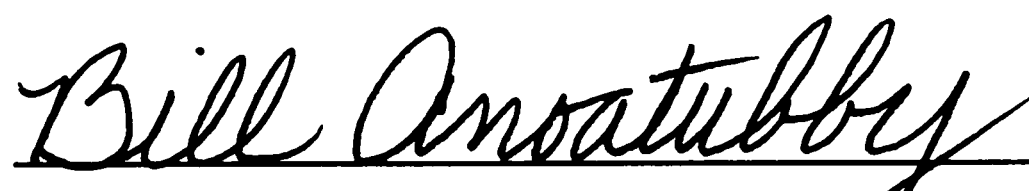
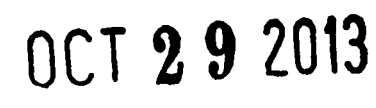

MARY FALLIN, GOVERNOR DATE

Attest:

Secretary of State

THE CHICKASAW NATION

BILL ANOATUBBY, GOVERNOR DATE

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
COMANCHE NATION, a federally recognized Indian Tribe and NUMUNU PAHMU, a Limited Liability Company

DEFENDANTS
GOVERNOR MARY FALLIN and THE STATE OF OKLAHOMA

(b) County of Residence of First Listed Plaintiff Comanche County
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)
D. Michael McBride, III; Crowe & Dunlevy, P.C., 500 Kennedy Building, 321 S. Boston Ave., Tulsa, Oklahoma 74103; (918) 592-9821

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District
6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 9 U.S.C. Sec. 9
Brief description of cause: Request for judgment confirming award by arbitrators of emergency injunctive relief

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 11/19/2013 SIGNATURE OF ATTORNEY OF RECORD s/Mike McBride

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.