

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

(1) BINGER OPERATIONS, LLC,	)	
	)	
Plaintiff(s),	)	
	)	
v.	)	Case No. CIV-2014-35-HE
	)	
(1) BRENDA SHEMAYME EDWARDS	)	
(2) PHILLIP SMITH; and	)	
(3) CADDO TRIBAL COUNCIL	)	
	)	
Defendant(s)	)	

**BRIEF IN SUPPORT OF MOTION TO DISMISS**

Comes Now, Phillip M. Smith, elected Vice-Chairman and acting Chairman of the Caddo Nation of Oklahoma and the elected Caddo Nation of Oklahoma Tribal Council (CNTC) in their official capacities, by and through the undersigned counsel, and respectfully requests that this Court Dismiss the above captioned cause pursuant to Fed. R. Civ. P., Rule 12 (b) (1), for lack of subject matter jurisdiction. The Defendants verily believe this Court lacks subject matter jurisdiction barring this interpleader action. Further, this is an internal Tribal dispute which should be resolved in a Tribal forum. See attached exhibit "1", resolution 01-2014-02 of the Caddo Nation of Oklahoma.

In support of this Motion the Defendants offer the following for the Courts consideration:

**Brief of Statements and Authorities in Support of the Motion  
To Dismiss**

- I. Sovereign Immunity of the Nation and its officers acting in their official capacities extends to Interpleader actions.**

The Tenth Circuit Court of Appeals has long held that Indian Tribes possess common-law immunity from suit traditionally enjoyed and possessed by sovereign powers. Santa Clara Pueblo v. Martinez, 436 U.S. 49, 58 (1978); Kiowa Tribe of Oklahoma. v. Mfg. Tech. Inc., 523 U.S. 751, 760 (1998), which stated “Tribes enjoy immunity from suits on contracts, whether those contracts involve governmental or commercial activities and whether they were made on or off the reservation.” See also, Nahno-Lopez v. Houser, 627 F. Supp.2d 1269, 1282 (W.D. Okla. 2009), which stated, “As sovereign powers, federally recognized Indian tribes possess immunity from suit in federal court”.

The Indian Nations may shed their Tribal immunity just as any sovereign; however, this only occurs when the Tribe clearly and expressly waives its immunity, or when the immunity is abrogated by Congress. This premise was clearly stated in the case of Oklahoma Tax Commission v. Citizen Band Potawatomi Tribe of Oklahoma, 498 U.S. 505, 509 (1991), wherein the Court stated, “Suits against Indian Tribes are thus barred by sovereign immunity absent a clear waiver by the Tribe or Congressional abrogation.”

Bank of Oklahoma v. Muscogee (Creek) Nation, 972 F.2d 1166 (10<sup>th</sup> Cir. 1992), decided by the Tenth Circuit Court of Appeals expressly held that Tribal immunity extends to interpleader actions. In that case, Bank of Oklahoma filed an interpleader action against the Muscogee (Creek) Nation and Indian Country USA, Inc. (INUSA). The district court dismissed both the interpleader and the cross-claim of ICUSA, citing Tribal sovereign immunity and the principle of Tribal exhaustion of remedies. The Tenth Circuit affirmed on all points and rejected each of Bank of Oklahoma’s claims.

Tribal sovereign immunity also protects each of the Tribal officials named as a Defendant in this action. The Tenth Circuit has held time and again that tribal sovereign immunity extends to tribal officials, as long as they are acting within the scope of their official capacities. Native Am. Distrib. V. Seneca-Cayuga Tobacco Co., 546 F.3d 1288, 1296 (10<sup>th</sup> Cir. 2008), wherein the Court stated, “It is clear that a Plaintiff generally may not avoid the operation of tribal immunity by suing tribal officials ...accordingly, a tribes immunity generally immunizes tribal officials from claims made against them in their official capacities.” Kenai Oil and Gas , Inc. v. Dep’t of Interior, 522 F. Supp. 521, 531 (D. Utah 1981), affirmed at 671 F.2nd 383 (10<sup>th</sup> Cir. 1982 ), found that “Tribal immunity may not be evaded by suing tribal officers.”

All members of the Tribal Council are elected or appointed officials of the Caddo Nation of Oklahoma and as official representatives of the Nation, each is cloaked with the Nation’s sovereign immunity.

“Tribal sovereignty is a matter of subject matter jurisdiction, which may be challenged by a motion to dismiss under Fed. R. Civ. P. 12 (b) (1) “; Miner Elec. Inc. v. Muscogee ( Creek ) Nation, 505 F.3rd 1007, 1009 (10<sup>th</sup> Cir. 2007). Plaintiff, Binger Operations LLC does not assert that the Nation has waived, or that Congress has abrogated, the Nation’s sovereign immunity and because each member of the Tribal Council is immune from suit in this Court, this Court lacks subject matter jurisdiction and this cause must be dismissed.

**II. The Court has no Jurisdiction to determine an internal tribal dispute which should be resolved in a tribal forum even if the Tribal Council members were not entitled to sovereign immunity.**

Plaintiff claims in their Petition that the Caddo Nation cannot seek resolution from the tribal court and that the Nation does not have a law and order code covering the issues alleged. Pls.

Pet. At 6 ¶ 22. However, this question is one that must be answered by the Court itself as made clear in the Tenth Circuit decision of the Bank of Oklahoma case:

The law of this circuit is that a federal court should not hear a challenge to tribal court jurisdiction until tribal court remedies have been exhausted. Tillet v. Lujan, 931 F.2d 636, 640-641 (10<sup>th</sup> Cir. 1991); Superior Oil Co. v. United States, 789 F.2d 1324, 1328, 1329 (10<sup>th</sup> Cir. 1986 )....The law is quite clear: "for reasons of comity, federal courts should abstain from hearing cases that challenge tribal court jurisdiction until tribal court remedies, including appellate review, are exhausted." *Bank of Oklahoma*, 972 F.2d at 1169-1170. In that case the court ultimately held that "unless and until bank has sought resolution in tribal court, its claim of having no available remedy rings hollow." *Id* at 1170. Also see, Prairie Band of Pottawatomie Tribe of Indians v. Udall, 355 F.2d 364 (10<sup>th</sup> Cir. 1966), "there is no federal jurisdiction to settle intertribal controversies."

Contrary to the allegations contained the Petitioners Motion for Leave to Deposit Funds and the allegations contained in their Petition, there is presently on file with the Bureau of Indian Affairs, Anadarko Agency, and the Southern Plains Regional Office a resolution passed by the Nation's active membership granting the CFR Court jurisdiction to hear the dispute complained of by the Petitioner which is attached hereto as exhibit "1".

The parties all acknowledge that the dispute in this case is an internal tribal dispute. Pl.'s Pet. Pg 4 ¶ 14. No action has yet been filed in the CFR court to resolve the dispute. It is clear that the Tenth Circuits consistent decisions compel this Court to dismiss or stay this proceeding at least until the CFR court has the opportunity to hear the dispute and tribal remedies are exhausted.

**Conclusion**

The Tenth Circuit Court of Appeals has consistently held that Indian tribes and their officers acting in their official capacities are immune generally from suit and expressly from suits for Interpleader. Only the Caddo Nation of Oklahoma or Congress can set aside the Nations immunity and neither has done so. The Tenth Circuit has consistently held that internal tribal disputes, as this one, must be resolved by the tribes and their courts or by other tribal remedies. Thus, this court lacks subject matter jurisdiction over the defendants and the Court should dismiss this case for lack of subject matter jurisdiction or stay the proceeding until all tribal remedies are exhausted.

Respectfully submitted,

By: s/Ryland L. Rivas

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Attorney for Defendant, Phillip M. Smith  
And Caddo Tribal Council

**CERTIFICATE OF SERVICE**

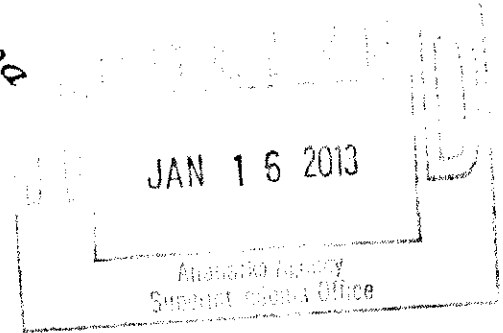
I hereby certify that I electronically transmitted the above and foregoing document to which this certification is attached and any attached exhibits to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF Registrants:

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s/Ryland L. Rivas

*Caddo Nation of Oklahoma*

Post Office Box 487  
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RESOLUTION 01-2014-02

**RESOLUTION OF THE CADDO NATION ACTIVE MEMBERSHIP  
REGARDING THE UNAUTHORIZED ACTIONS OF FORMER CHAIRMAN  
BRENDA SHEMAYME EDWARDS**

WHEREAS: the Caddo Nation of Oklahoma is a federally recognized tribe, governed by a Constitution pursuant to the Oklahoma Indian Welfare Act of 1936, (49 STAT. 1967), and

WHEREAS: under the revised Caddo Nation Constitution and Bylaws adopted by the Caddo Nation of Oklahoma on June 26 1976, amended January 9, 1982 and June 29, 2002), and recognized by the Secretary of the Interior, the Tribal Council of the Caddo Nation has certain powers, and

WHEREAS: **Article I - Definition of Terms – Section 2.** Caddo Tribal Active Membership shall be the governing body of the tribe, composed of all enrolled members at least eighteen (18) years of age or over, who have registered to vote, and

WHEREAS: **Article V – Powers of the Tribal Council - Section 3. Reserve Power.** All authority not vested in the Tribal Council by this article is reserved to the membership and may be delegated to the Tribal Council through appropriate amendments to the Constitution, and

WHEREAS: the Caddo Nation is currently experiencing an internal tribal dispute and does not have a Tribal Court in place to adjudicate said dispute, and

BE IT RESOLVED: the Caddo Nation active membership directs the Bureau of Indian Affairs (BIA) to remove the name of Brenda Shemayme Edwards from all official documents pertaining to the Caddo Nation pursuant to her recall by membership on September 7, 2013, and

BE IT RESOLVED: the Caddo Nation active membership directs the BIA to assist with the return of all Caddo Nation funds and property in the possession of Brenda Shemayme Edwards, her agents, or purported employees, and

NOW THEREFORE BE IT RESOLVED: the Caddo Nation active membership grants jurisdiction to the Court of Indian Offenses to enforce this resolution pursuant to 25 CFR § 11.118, if the property of the Caddo Nation is not returned to the Tribal Headquarters

of the Caddo Nation within ten (10) days of the submission of this resolution to the Superintendent of the Anadarko Agency

CERTIFICATION

JAN 16 2013

We certify that the Caddo Nation Membership, a quorum being composed of twenty (20) members, of which 26 were present at a meeting duly called and convened on the 4th day of January, 2014, at the Caddo Nation Complex, Binger, Oklahoma and that the foregoing resolution was duly adopted by an affirmative vote of 21 **FOR**, with 0 **OPPOSING**, and 0 **ABSTAINING**.

ATTEST:

Phil M. Smith  
Chairman (Acting)



01/07/2014  
Date

Christine A. Dean  
Secretary (Acting)

01-07-2014  
Date