

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

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**4:19-cv-00581-TCK-JFJ**

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**PEORIA TRIBE OF INDIANS OF OKLAHOMA,**

**Plaintiff,**

**vs.**

**DOERNER, SAUNDERS, DANIEL & ANDERSON, L.L.P., *et al.*,**

**Defendant.**

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**DEFENDANT DOERNER SAUNDERS DANIEL & ANDERSON, LLP'S  
RESPONSE TO PLAINTIFF'S MOTION TO REMAND**

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JAMES K. SECREST, II (OBA #8049)  
JENNIFER L. STRUBLE (OBA #19949)  
SECREST HILL BUTLER & SECREST  
7134 South Yale, Suite 900  
Tulsa, OK 74136  
(918) 494-5905 T; (918) 494-2847 F  
[jsecrest@secresthill.com](mailto:jsecrest@secresthill.com)  
[jstruble@secresthill.com](mailto:jstruble@secresthill.com)  
ATTORNEYS FOR DEFENDANT,  
DOERNER SAUNDERS DANIEL  
& ANDERSON, LLP

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## I. INTRODUCTION

Doerner Saunders Daniel & Anderson LLP (“Doerner Saunders”), filed its Notice of Removal [Doc. 2] in this case because the Peoria Tribe of Indians of Oklahoma (“Plaintiff”) asserts claims against Doerner Saunders alleging violations of legal duties purportedly arising under the federal Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701, *et seq.*, enforced by the National Indian Gaming Commission (NIGC). Plaintiff moves to remand [Doc. 24] this case to state court for lack of subject matter jurisdiction even though its claims against Doerner Saunders and other Defendants are predicated on alleged violations of those asserted federal duties. Plaintiff’s reliance on duties purportedly arising under federal law creates federal question jurisdiction.

This case is an attempt by Plaintiff to circumvent the carefully struck balance between federal, state, and tribal interests in the regulation of Indian gaming set forth by Congress within the IGRA. Plaintiff’s state law claims do not merely present a peripheral federal issue. Rather, the alleged mismanagement of the Casino and misappropriation of funds are the central elements of Plaintiff’s claims, forming the dispositive issue in this case. The Casino is subject to the oversight of the National Indian Gaming Commission (“NIGC”) as provided by IGRA and the alleged damages arise, at least in part, through fines imposed by that oversight.

Federal jurisdiction is proper here under the Supreme Court’s four-part test set forth in *Grable & Sons Metal Products, Inc. v. Darue Eng’g & Mfg.*, 545 U.S. 308 (2005), and *Gunn v. Minton*, 568 U.S. 251 (2013). Under that test, “federal jurisdiction over a state law claim will lie if a federal issue is: (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress.” *Gunn*, 568 U.S. at 258.

All four factors are present here. *First*, Plaintiff’s Petition necessarily raises federal

issues. Plaintiff makes its reliance on the IGRA clear by premising its claims against Doerner Saunders and other defendants on Campbell's alleged failure to comply with IGRA regulations; specifically, 25 U.S.C. § 2710(d)(9), 25 U.S.C. § 2711, and 25 C.F.R. § 533.3(d). *Second*, the parties actually dispute the federal issues because they contest whether those duties exist and, if so, whether Doerner Saunders violated them. *Third*, the federal issues are substantial given the federal interest in the sovereignty of the Tribes and IGRA's nationwide regulatory scheme, which requires uniformity, and the federal government's asserted interest in the subject matter of this litigation. And *fourth*, federal jurisdiction will not upset any federal-state balance. The matter, therefore, should not be remanded to state court.

## **II. PLAINTIFF'S ACTION**

Plaintiff filed this lawsuit in Oklahoma state court on September 26, 2019. The Petition identifies Campbell, along with Sneed Land and Doerner Saunders as his employers, and Baxcase as defendants. The Petition asserts causes of action against Doerner Saunders for Legal Malpractice as employer and principal for Campbell in his capacity as attorney.

Plaintiff's central theory of liability against Doerner Saunders is that Doerner Saunders employed Campbell and included him as a partner in the law firm. Doerner Saunders, therefore, through agency or *respondeat superior* liability, is responsible for the actions of Campbell when Campbell failed to comply with the IGRA regulations and the NIGC – federal law.

The alleged duties on which Plaintiff's claims rest—the duties to comply with the demands of the NIGC for purposes of depreciation calculation and compensation to Campbell through Baxcase—arise, if at all, out of the federal IGRA and its implementing regulations. The Tribe itself references repeatedly to the provisions of the IGRA allegedly violated by Campbell, for which the Tribe claims Doerner Saunders is responsible. Further, Plaintiff bases damages on the amount of possible fines to be imposed by the NIGC through the federal – not state –

requirements.

The Petition therefore alleges that Doerner Saunders violated federal duties arising under the IGRA and related NIGC regulations. Plaintiff makes this clear by relying on federal sources and NIGC requirements. Plaintiff likewise fails to specifically identify a state law source for any alleged violation by Campbell that resulted in the alleged legal malpractice for which Plaintiff is holding Doerner Saunders responsible. In contrast to the Petition's extensive discussion of federal IGRA requirements and NIGC findings and enforcement, the Petition contains no similar specific references to Oklahoma gaming laws that Campbell could possibly have violated in order to cause the Tribe to be subject to the fines claimed as damages. Accordingly, Plaintiff's cursory invocation of state law does not actually support any cause of action that depends on Doerner Saunders' employment of Campbell and Campbell's alleged failure to comply with federal gaming laws.

### **III. ARGUMENTS AND AUTHORITIES**

Given Plaintiff's reliance on duties arising under federal law, federal question jurisdiction is proper. Although Plaintiff contends it asserts only state law causes of actions, its tort claims are predicated on alleged violations of the IGRA and enforcement by the NIGC. Accordingly, those claims necessarily raise substantial federal issues that should be resolved in federal court. Because this case presents federal issues, Plaintiff's motion to remand should be denied.

The litigation of this matter will necessarily require obtaining materials from the NIGC and members of the Tribe who might have had a hand in developing, implementing, or investigating the relationship between the Tribe and DED and Campbell. To the extent the NIGC records related to the Peoria Tribe, and perhaps relevant employees of the NIGC, are not located in Oklahoma, a state Court subpoena would be useless in attempting to obtain information necessary for litigation. State subpoena power stops at the state line. Federal Rule of Civil



Procedure 45 provides that a federal subpoena can be served anywhere in the United States. Fed. R. Civ. Proc. 45(b)(2).

Therefore, the only way litigation will be able to be properly managed and completed is to proceed in Federal Court such that all necessary information to be obtained through subpoena duces tecum and/or deposition testimony may be commanded by and through the federal court system.

**A. Plaintiff's Petition Necessarily Raises Disputed and Substantial Issues of Federal Law**

Federal district courts have removal jurisdiction over “any civil action brought in a State court of which the district courts of the United States have original jurisdiction,” 28 U.S.C. § 1441(a), and original jurisdiction over “all civil actions arising under the Constitution, laws, or treaties of the United States,” 28 U.S.C. § 1331. “A single claim over which federal-question jurisdiction exists is sufficient to allow removal.” *Broder v. Cablevision Sys. Corp.*, 418 F.3d 187, 194 (2d Cir. 2005); see *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 563 (2005); *City of Chicago v. Int’l Coll. of Surgeons*, 522 U.S. 156, 164–66 (1997).

This case arises within the context of the unique federal interest presented by the relationship between Indian tribes and the federal government. “The traditional notions of Indian sovereignty provide a crucial ‘backdrop,’ against which any assertion of state authority must be assessed.” *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 334 (1983) (internal citations omitted). Indian tribes have historically been treated as “domestic dependent nations.” *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 169 n.18 (1982); *Cramer v. United States*, 261 U.S. 219, 232 (1923); *Cherokee Nation v. Georgia*, 30 U.S. 1, 17 (1831). “Their relation to the United States resembles that of a ward to his guardian.” *Cherokee Nation*, 30 U.S. at 17. “The United States undoubtedly owes a strong fiduciary duty to its Indian wards.” *Nevada v. United States*,

463 U.S. 110, 142 (1983). Congress observed within IGRA that a “principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government.” 25 U.S.C. § 2701(4). From the tribes' relationship with the federal government “there arises the duty of protection,” *Cramer*, 261 U.S. at 232, creating a strong federal interest in maintaining the integrity of the regulatory role granted the tribes by Congress.

Plaintiff's motion for remand to State Court is premised on the notion that simply because the Petition only alleges violations of State law and seeks relief pursuant to provisions of Oklahoma law, this case does not arise under the laws of the United States. Even though a Petition alleges only state law violations and seeks relief under state provisions, it may nonetheless “arise under the laws of the United States” for purposes of federal district court subject matter jurisdiction “if vindication of a right under state law necessarily turned on some construction of federal law.” *Grable, supra*, 545 U.S. 308; *Smith v. Kansas City Title & Trust Co.*, 255 U.S. 180 (1921); *Hopkins v. Walker*, 244 U.S. 486 (1917). As the Supreme Court held in *Grable*:

[F]ederal question jurisdiction will lie over state-law claims that implicate significant federal issues. The doctrine captures the commonsense notion that a federal court ought to be able to hear claims recognized under state law that nonetheless turn on substantial questions of federal law, and thus justify resort to the experience, solicitude, and hope of uniformity that a federal forum offers on federal issues.

*Grable*, 545 U.S. at 312 (internal citations omitted).

To qualify under this basis for federal question jurisdiction, the *Grable* Court explained that a case must meet specific standards. First, “federal jurisdiction demands not only a contested federal issue, but a substantial one, indicating a serious federal interest in claiming the advantages thought to be inherent in a federal forum.” *Id.* at 313. Second, even if a question is

contested and substantial, the assumption of federal court jurisdiction must be “consistent with congressional judgment about the sound division of labor between state and federal courts governing the application of §1331.” *Id.* at 313-314. At issue in this inquiry is whether the acceptance of Federal question jurisdiction will herald “a potentially enormous shift of traditionally state cases into federal courts.” *Id.* at 319.

Even where state law creates the asserted causes of action, they may raise federal issues sufficient to warrant removal jurisdiction. Under the Supreme Court’s *Grable* and *Gunn* decisions, “federal jurisdiction over a state law claim will lie if a federal issue is: (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress.” *Gunn*, 568 U.S. at 258; *see also Grable*, 545 U.S. at 315. “Where all four of these requirements are met . . . jurisdiction is proper because there is a serious federal interest in claiming the advantages thought to be inherent in a federal forum, which can be vindicated without disrupting Congress’s intended division of labor between state and federal courts.” *Gunn*, 568 U.S. at 258 (quotation marks omitted).

Courts have found these factors to be satisfied in cases where state law claims are predicated on violations of federal statutes governing complex, nationwide regulatory schemes for which uniformity is essential. *See, e.g., PNC Bank, N.A. v. PPL Elec. Utils. Corp.*, 189 F. App’x 101, 104 n.3 (3d Cir. 2006) (state law claim based on violation of Internal Revenue Code “gives rise to federal-question jurisdiction” under *Grable*); *Broder*, 418 F.3d at 196 (state law claims premised on violations of Communication Act’s uniform rate requirement satisfy “*Grable* test for federal-question removal jurisdiction”); *NASDAQ OMX Grp., Inc. v. UBS Sec., LLC*, 770 F.3d 1010, 1031 (2d Cir. 2014) (state law claims premised on violations of Exchange Act “necessarily raise disputed issues of federal law of significant interest to the federal system as a

whole”); *New York ex rel. Jacobson v. Wells Fargo Nat’l Bank, NA*, 824 F.3d 308, 315–18 (2d Cir. 2016) (state law claims based on defendant’s alleged violation of Internal Revenue Code satisfy *Grable*); *Ranck v. Mt. Hood Cable Regulatory Comm’n*, 2017 WL 1752954, at \*5 (D. Or. May 2, 2017) (state law claims based on violations of Cable Communications Policy Act satisfy *Grable*).

This case, too, satisfies all four elements of *Grable* and *Gunn*.

### **B. The Petition “Necessarily Raises” Federal Questions**

An action “necessarily raises” a federal question when “the right to relief depends upon the construction or application of federal law.” *PNC Bank*, 189 F. App’x at 104 n.3. Significantly, “an action under 28 U.S.C. § 1331(a) arises . . . if the action requires construction of a federal statute, or at least a distinctive policy of a federal statute requires the application of federal legal principles.” *V.I. Hous. Auth. v. Coastal Gen. Constr. Servs. Corp.*, 27 F.3d 911, 916 (3d Cir. 1994) (emphasis added); see also *Merrell Dow Pharms. v. Thompson*, 478 U.S. 804, 808–09 (1986) (federal question jurisdiction exists if “vindication of a right under state law necessarily turn[s] on some construction of federal law” (emphasis added, internal citation omitted)).

In determining whether state law claims turn on construction or application of federal law, the Court must “begin by considering the duty underlying each claim.” *NASDAQ*, 770 F.3d at 1020. “A state-law claim ‘necessarily’ raises federal questions where the claim is affirmatively ‘premised’ on a violation of federal law,” *Jacobson*, 824 F.3d at 315, or where the “singular duty” underlying the claim arises under federal law, *NASDAQ*, 770 F.3d at 1021.

Here, Plaintiff’s claims necessarily raise federal issues because they are expressly premised on Doerner Saunders’ alleged violations, by and through the actions of Campbell, of alleged legal duties that, according to Plaintiff, arise out of the IGRA and its implementing

regulations—*i.e.*, the duty to report, “any violations of IGRA and NIGC rules and regulations.” Petition at ¶ 19. Further, Plaintiff claims Doerner Saunders, by and through Campbell, was required to “protect[] the Peoria Tribe and the Casino from injury, including from violations of the agreements approved by NIGC, the promises made to NIGC to obtain those approvals, as well as IGRA and its accompanying regulations...”. Petition at ¶ 21. Despite its protestations to the contrary, Plaintiff’s reliance on federal law is evident on the face of the Petition. *See Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987) (federal jurisdiction exists when federal question is presented “on the face of the plaintiff’s properly pleaded complaint”); *Lontz v. Tharp*, 413 F.3d 435, 439 (4th Cir. 2005) (removal “is appropriate if the face of the complaint raises a federal question”).

Throughout the Petition, Plaintiff cites to federal sources to establish the alleged duties to report alleged violations, and repeatedly pleads that Doerner Saunders’ alleged violations of these duties, by and through Campbell, give rise to Plaintiff’s causes of action. For example:

- a. The Business Agreement between DED and the Tribe had to be approved by NIGC.
- b. Representations were allegedly made to the NIGC by Campbell.
- c. The representations were allegedly false.
- d. Without the allegedly false representations, NIGC would not have approved the Agreement and the Tribe would not have been damaged.
- e. Campbell, and therefore Doerner Saunders, had a duty to protect the Tribe by reporting violations of the IGRA and NIGC regulations.
- f. Campbell, and therefore Doerner Saunders, allegedly misrepresented the requirements of the NIGC and thereby violated the IGRA and NIGC

regulations.

- g. Campbell, and thereby Doerner Saunders, allegedly operated without the required oversight by the NIGC.
- h. Campbell, and thereby Doerner Saunders, allegedly violated the IGRA and NIGC regulations by concealing calculations of management fees.
- i. Campbell, and thereby Doerner Saunders, allegedly violated IGRA and NIGC regulations and specifically 25 C.F.R. § 535.1(b).

As these and other examples demonstrate, Plaintiff's claims against Doerner Saunders rest squarely on its allegations that Doerner Saunders breached duties arising out of the IGRA and its implementing regulations. Far from making mere references to federal law in its Petition, Plaintiff invokes federal law to undergird its entire theory of liability against Campbell, and thereby Doerner Saunders. It will be necessary to determine if Campbell, and thereby Doerner Saunders, did actually violated any of these regulations in order to determine liability.

Although a plaintiff "may avoid federal jurisdiction by *exclusive* reliance on state law," *Caterpillar*, 482 U.S. at 392 (emphasis added), Plaintiff here relies primarily on federal law. In the allegations set forth in its Petition, Plaintiff does not specifically cite any state law authority creating a legal malpractice claim arising from the imposition of fines for violations of regulations enforced by the NIGC. To the contrary, Plaintiff relies on federal law in support of those duties. *See, e.g.*, Pet. ¶¶ 19-22, 24-27. Thus, to prevail on its claims as pleaded, Plaintiff would have to establish that Doerner Saunders breached alleged duties that arise under federal law.

In pleading negligence, Plaintiff alleges that Campbell "had a professional duty as well as a duty on behalf of those law firms [Sneed Lang and Doerner Saunders] to exercise the ordinary

skill, due care and knowledge of an attorney purporting to have specialized knowledge in the areas of Indian law and particularly Indian gaming, a highly regulated industry.” Petition at ¶ 42. Plaintiff goes on to state, “But for Campbell’s action and inactions as set forth herein, the Peoria Tribe would not have paid excess management fees and would not have been subject to sanctions by the NIGC.” Petition at ¶ 42. Thus, to establish negligence as pleaded, Plaintiff must again show that Doerner Saunders, by and through Campbell, violated federal law. *See Benjamin v. S.C. Elec. & Gas Co.*, 2016 WL 3180100, at \*5 (D.S.C. June 8, 2016) (“While Plaintiffs’ allegations of negligence appear on their face to not reference federal law, federal issues are cognizable as the source for the duty of care resulting from [the defendant’s conduct].”).

In short, Plaintiff’s state law causes of action hinge on its allegations that Doerner Saunders breached duties arising out of the IGRA and its implementing regulations. To determine whether Doerner Saunders breached those duties, a court would necessarily have to interpret and apply the IGRA. Plaintiff’s claims therefore necessarily raise federal issues.

Plaintiff also argues that its Petition does not necessarily raise federal issues because it might be able to succeed on some of its claims without invoking federal law. Dkt. No. 31 at 20. As demonstrated above, federal law undergirds Plaintiff’s entire theory of liability against Doerner Saunders. But even if Plaintiff could prove some of its claims against Doerner Saunders without establishing violations of federal law, this Court still has jurisdiction because “[a] single claim over which federal-question jurisdiction exists is sufficient to allow removal” of the entire action. *Broder*, 418 F.3d at 194; *see City of Chicago*, 522 U.S. at 166 (“Nothing in the jurisdictional statutes suggests that the presence of related state law claims somehow alters the fact that [the] complaints, by virtue of their federal claims, were ‘civil actions’ within the federal courts’ ‘original jurisdiction.’”). Because at least some of Plaintiff’s causes of action turn on a

showing that Doerner Saunders, by and through Campbell, violated the IGRA and federal regulations, federal question jurisdiction exists.

**C. The Parties “Actually Dispute” the Federal Issues**

The federal issues raised by the Petition are “actually disputed” because the parties contest whether the IGRA and its implementing regulations in fact give rise to duties to report and protect the Tribe, the precise scope and contours of any such duties that might exist under the IGRA, and whether Doerner Saunders is responsible for Campbell allegedly violated these alleged duties by failing to properly account for depreciation and failing to report compensation changes. *See, NASDAQ*, 770 F.3d. at 1023. Indeed, because Plaintiff’s claims against Doerner Saunders depend on their theory that Campbell breached these alleged duties, this issue is the “central point of dispute.” *Gunn*, 568 U.S. at 259.

Given these disputes about the existence and scope of Doerner Saunders’ duties under the IGRA, Plaintiff cannot credibly maintain, as it asserts in its remand motion, that no federal issue is actually disputed. Doerner Saunders denies that the alleged duties under the IGRA are as broad in scope as Plaintiff alleges they are and Doerner Saunders denies that they violated their duties under the IGRA in the manner alleged in Plaintiff’s Petition. Unless Plaintiff is willing to concede both points, then the federal issue is actually disputed.

**D. The Federal Issues Are “Substantia”**

The Supreme Court has explained that “[t]he substantiality inquiry under *Grable* looks . . . to the importance of the issue to the federal system as a whole.” *Gunn*, 568 U.S. at 260. A federal issue “can be important for many reasons,” including because (i) “state adjudication would undermine the development of a uniform body of federal law”; (ii) “resolution of the issue has broad significance for the federal government”; or (iii) “the case presents a nearly pure issue of law that would have applications to other federal cases.” *Bd. of Comm’rs of Se. La. Flood*



*Prot. Auth.-E. v. Tenn. Gas Pipeline Co.*, 850 F.3d 714, 724 (5th Cir. 2017) (quotation marks omitted). As the Supreme Court recognized in *Grable*, “federal jurisdiction demands not only a contested federal issue, but a substantial one, indicating a serious federal interest in claiming the advantages thought to be inherent in a federal forum.” 545 U.S. at 313. However, “a case should be dismissed for want of a substantial federal question only when the federal issue is ‘(1) wholly insubstantial or obviously frivolous, (2) foreclosed by prior cases which have settled the issue one way or another, or (3) so patently without merit as to require no meaningful consideration.’ ” *Nicodemus v. Union Pacific Corp.*, 440 F.3d, 1227, 1236 (quoting *Wiley v. Nat’l Collegiate Athletic Ass’n*, 612 F.2d 473, 477 (10th Cir. 1979)). Because it implicates important federal interests related to the Tribes, gaming, and sovereignty, the issue at the center of the Tribe’s primary state law claims satisfies the requirement of substantiality.

As the Tenth Circuit has long recognized, IGRA “provides a comprehensive regulatory framework for gaming activities on Indian country which seeks to balance the interests of tribal governments, the states, and the federal government.” *Pueblo of Santa Ana v. Kelly*, 104 F.3d 1546, 1548 (10th Cir. 1997) (internal citations omitted). Exercising federal-question jurisdiction in such cases “captures the commonsense notion that a federal court ought to be able to hear claims recognized under state law that nonetheless turn on substantial questions of federal law, and thus justify resort to the experience, solicitude, and hope of uniformity that a federal forum offers on federal issues.” *Grable*, 545 U.S. at 312.

Courts have often found federal issues to be sufficiently substantial where they raise “questions [that] involve aspects of . . . complex federal regulatory scheme[s] . . . as to which there is a serious federal interest in claiming the advantages thought to be inherent in a federal forum.” *Broder*, 418 F.3d at 195 (quotation marks omitted). Such rulings are especially common

where, as here, federal agencies are responsible for implementing a national regulatory system for which uniformity is essential. In *NASDAQ*, for example, the Second Circuit ruled that “the disputed federal issue in th[e] case—whether [the defendant] violated its Exchange Act obligation to provide a fair and orderly market in conducting an IPO—is sufficiently significant to the development of a uniform body of federal securities regulation to satisfy the requirement of importance to the federal system as a whole.” 770 F.3d at 1024 (quotation marks omitted). Likewise, in *Jacobson*, the Second Circuit held that “minimizing uncertainty over the tax treatment of mortgage-backed securities, as Congress intended, fully justif[ied] resort to the experience, solicitude, and hope of uniformity that a federal forum offers on federal issues.” 824 F.3d at 318 (internal citation omitted).

In enacting IGRA, Congress was mindful of the distinct federal interest inherent in the regulation of Indian gaming:

In determining what patterns of jurisdiction and regulation should govern the conduct of gaming activities on Indian lands, the Committee has sought to preserve the principles which have guided the evolution of Federal-Indian law for over 150 years. In so doing, the Committee has attempted to balance the need for sound enforcement of gaming laws and regulations, with the strong Federal interest in preserving the sovereign rights of tribal governments to regulate activities and enforce laws on Indian land. The Committee recognizes and affirms the principle that by virtue of their original tribal sovereignty, tribes reserved certain rights when entering into treaties with the United States, and that today, tribal governments retain all rights that were not expressly relinquished.

S. Rep. No. 446, 100th Cong., 2d Sess. 5 (1988). Given Congress' decision, “consistent with its plenary power over Indian affairs, to balance competing policy interests and to adjust, where appropriate, the jurisdictional framework for regulation of gaming on Indian lands,” *Gaming Corp. of America v. Dorsey & Whitney*, 88 F.3d 536, 546 (quoting S. Rep. No. 446, 100th Cong.,

2d Sess. 3 (1988), any decision by a court concerning the appropriate duties exercised in representing the Tribe in Gaming Agreements necessarily implicates federal interests of the highest order. Plaintiff's claims would require a court to determine the existence and scope of Doerner Saunders' obligations under the IGRA and whether Doerner Saunders breached those duties, implicating the uniformity concerns addressed above.

**E. Federal Jurisdiction Will Not Disrupt the Congressionally-Approved Balance of Federal-State Judicial Responsibilities**

Finally, Plaintiff baldly asserts that “if this Court were to undertake to adjudicate the accuracy of the application of the federal statutes and regulations as applied by the NIGC, it cannot do so without the possibility of subjecting the Plaintiff to differing application of the Statutes and regulations by this Court in contract to the rulings of the NIGC.” Motion at 14. If the Federal Court then, who? Who could possibly determine whether the failure to comply with the NIGC and the imposition of fines by that agency arises to the level of legal malpractice as it relates to Doerner Saunders? Certainly a state court is in no better position than this Court.

Plaintiff's concern is misplaced, because federal courts are *already* the exclusive fora for determining the permissible scope of restraints on Doerner Saunders under the federal IGRA. Federal courts also have exclusive jurisdiction over proceedings seeking to enjoin violations of the IGRA. *See* 25 U.S.C. § 2713(c) (“A decision of the Commission to give final approval of a fine levied by the Chairman or to order a permanent closure pursuant to this Section shall be appealable to the appropriate Federal district court...”). *See also*, 28 U.S.C. § 1362 (“The district courts shall have original jurisdiction of all civil actions, brought by any Indian tribe or band...”). **Thus, the questions presented in Plaintiff's Petition are precisely those over which federal courts already exercise jurisdiction.**

In addition, as explained above, allowing cases like this one to proceed in federal court promotes uniform development of federal law. By contrast, litigating this case in state court would run the risk of the state court applying federal requirements inconsistently with the manner in which DEA—the federal agency responsible for enforcing the IGRA—applies them.

**CONCLUSION**

For the reasons set forth above, Doerner Saunders respectfully requests that the Court deny Plaintiff's motion to remand.

Respectfully submitted,

SECRET, HILL, BUTLER & SECRET

BY: s/ Jennifer L. Struble  
JAMES K. SECREST, II, OBA #8049  
JENNIFER L. STRUBLE, OBA #19949  
7134 S. Yale, Ste. 900  
Tulsa, OK 74136  
(918) 494-5905  
(918) 494-2847 fax  
[jsecrest@secresthil.com](mailto:jsecrest@secresthil.com)  
[jstruble@secresthil.com](mailto:jstruble@secresthil.com)  
ATTORNEYS FOR DEFENDANT,  
DOERNER SAUNDERS DANIEL  
& ANDERSON, LLP

**Certificate of Mailing**

I hereby certify that on December 16, 2019, the foregoing document was electronically transmitted 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:

Louis Bullock  
Patricia Bullock  
[lbullock@bullocklawtulsa.com](mailto:lbullock@bullocklawtulsa.com)  
[pbullock@bullocklawtulsa.com](mailto:pbullock@bullocklawtulsa.com)

Michael Salem  
[msalem@msalemlaw.com](mailto:msalem@msalemlaw.com)

Mark A. Waller  
[mwaller@wjwattorneys.com](mailto:mwaller@wjwattorneys.com)

Elizabeth R. Sharrock  
[esharrock@piercecouch.com](mailto:esharrock@piercecouch.com)

s/ Jennifer L. Struble \_\_\_\_\_