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***Pruitt v. Native Wholesale Supply:* The End of the Road for the Latest Wave of Nation-to-Nation Cigarette Sales?**

[Indian Law & Gaming Practice Group](#)

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Earlier this month, the Oklahoma Supreme Court decided what may well be the last case in a decade-old dispute regarding nation-to-nation tribal cigarette sales. Tribal-state conflicts over cigarette sales have been the subject of many disputes over the years, all the way up to the U.S. Supreme Court. In 1980, the Supreme Court ruled that a state could impose taxes on cigarettes purchased and sales taxes on cigarettes purchased on tribal land by non-members of the tribe. In *Washington v. Confederated Tribes of Colville Indian Reservation*, the high court also allowed the state to seize contraband cigarette shipments en route to the tribes.

The latest wave of tribal-state litigation started after the massive settlement between several states and the tobacco companies over Medicaid costs in 1998—the so-called Master Settlement Agreement (MSA). After the MSA, states like Oklahoma enacted laws to fund escrow accounts to cover smoking-related healthcare expenses. These laws required cigarette manufacturers who had not joined the MSA to make annual payments. Under a Complementary Act, the Oklahoma Attorney General was tasked with monitoring these payments and creating a directory of those manufacturers who were in compliance. The Complementary Act declared that cigarettes not listed in this directory would be contraband, and their sale was made illegal in the state. The case against Native Wholesale Supply (NWS) involves such contraband cigarettes sold under the Seneca brand.

NWS was a company chartered under Sac and Fox law and owned by a member of the Seneca Nation. It imported Seneca cigarettes from Canada for sales to other tribally owned entities, including Muscogee Creek Nation Tobacco Wholesale. In 2008, the state of Oklahoma sued under the Complementary Act, seeking to force NWS to disgorge all proceeds it had received from such sales. NWS fought the suit on multiple fronts, including by asserting that Oklahoma's courts lacked jurisdiction over it and Indian commerce. The Oklahoma Supreme Court rejected these arguments in 2010, and the U.S. Supreme Court declined NWS's petition for writ of certiorari. After this major blow, NWS filed for bankruptcy protection, but this case eventually proceeded to the merits.

In the latest round, the district court granted judgment to Oklahoma, ordering NWS to disgorge more than \$47 million in gross proceeds received for the sale of Seneca cigarettes within the state—despite the fact that the cigarettes had been stamped “for reservation sales only.” NWS argued that this proved its intent that the cigarettes would only be sold on Native American reservations. The court rejected this argument as “simply disingenuous.” Over one dissent, the court ruled that its factual findings in the 2010 decision were binding on the court below and that the Attorney General had properly shown an undisputed violation of the Complementary Act, entitling it to the \$47 million award.

The opinion has not been released for publication by the Oklahoma Supreme Court and is subject to change. But, this may be the end of the latest battle in the long-fought war over tribal cigarette sales.

If you have any questions about this ruling or need assistance with any other Indian law matter, please contact Susan Huntsman or any other member of Crowe & Dunlevy's Indian Law & Gaming practice group.

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About Crowe & Dunlevy

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