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Oklahoma Supreme Court Does An About-Face on Tribal Sovereignty—Strikes Down Jurisdiction for Tort and Prize Claim and Dram-Shop Lawsuits

October 14, 2013

In a significant reversal of several recent decisions, the Oklahoma Supreme Court adopted the position that “courts of competent jurisdiction” in the model gaming compact does not include Oklahoma state courts and that tribes are immune from dram-shop liability in state court unless the tribe expressly waives its sovereignty immunity.

On September 24, 2013, the Oklahoma Supreme Court decided *Sheffer v. Buffalo Run Casino, PTE, Inc.*, 2013 OK 77, ___ P.3d ___. The Sheffers and their young son were injured when the truck they were riding in collided with a rental vehicle driven by an employee of Carolina Forge Company, LLC. The Sheffers sued Carolina Forge based on various tort claim theories. The Sheffers also sued Buffalo Run Casino, the Peoria Tribe of Indians of Oklahoma and PTE, Inc. (Peoria Tribe) in Oklahoma state court for dram-shop liability. Dram-shop liability is the liability of a seller of alcoholic beverages for the injuries the purchaser of the beverages caused a third party.

The Court first addressed the issue of the model gaming compact and the limited waiver of tribal immunity for claims to be brought in “courts of competent jurisdiction.” The Court had previously ruled that Oklahoma state courts had civil-adjudicatory jurisdiction over compact-based Indian country lawsuits in a trilogy of cases: *Dye v. Choctaw Casino of Pocola*, 2009 OK 52, 230 P.2d 507; *Griffith v. Choctaw Casino of Pocola*, 2009 OK 51, 230 P.3d 488; and *Cossey v. Cherokee Nation Enters.*, 2009 OK 6, 232 P.3d 447.

After the decisions in *Dye*, *Griffith* and *Cossey*, several tribes arbitrated the issue with the State of Oklahoma. Each time the arbitrator concluded that Oklahoma courts were not courts of competent jurisdiction, as that phrase is used in the gaming compact. Subsequently, a federal court had agreed with the arbitrator and issued a number of separate orders confirming the arbitration decisions and enjoining the State of Oklahoma from asserting state civil-adjudicatory jurisdiction over compact-based tort or prize claim lawsuits against Indian tribes.

In *Sheffer*, the Court overruled *Dye*, *Griffith* and *Cossey* and held that Oklahoma state courts are not courts of competent jurisdiction as the term is used in the model gaming compact with regard to compact-based tort or prize claims.

The Court also reconsidered its recent decision in *Bittle v. Bahe*, 2008 OK 10, 192 P.3d 810, in which it held that federal law abrogated tribal immunity from suit in the area of alcoholic beverage laws and that tribes waive sovereign immunity when they apply for and receive a mixed beverage license from the state.

The Court in *Sheffer* overruled *Bittle*, and held that Congress has not expressly abrogated tribal immunity from private, state court dram-shop claims and applying for a mixed beverage license is not an express and unequivocal waiver of

sovereign immunity. As a result, the Court ruled the Peoria Tribe is immune from compact-based tort or prize claims in state court, including dram-shop claims and upheld the trial court's dismissal of the case against the Peoria Tribe.

This is a significant reversal of positions for the Oklahoma Supreme Court and is a strong recognition of the tribal sovereignty and immunity from suit in state court.

If you have any questions about the Court's decision or need assistance with any other Indian Law & Gaming matter, please contact Gerald L. Jackson or any other member of Crowe & Dunlevy's Indian Law & Gaming practice group.

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About Crowe & Dunlevy

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