UNITED STATES OF AMERICA
BEFORE THE NATIONAL RELATIONS BOARD
WASHINGTON, D.C.

CHICKASAW NATION, operating WINSTAR WORLD CASINO,	)	
Respondent,	)	
and	)	Case No. 17-CA-025031 17-CA-250121
INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 886, affiliated with THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS,	)	
Charging Party.	)	

BRIEF AMICUS CURIAE OF THE CHOCTAW NATION OF OKLAHOMA IN SUPPORT OF RESPONDENT CHICKASAW NATION

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INTRODUCTION

The Choctaw Nation of Oklahoma (the "Choctaw Nation"), a federally recognized Indian tribe, 77 Fed.Reg. 47869 (August 10, 2012), supports in all respects the positions taken by the Chickasaw Nation in response to Counsel for the Acting General Counsel's Brief (the "General Counsel's Brief") to the National Labor Relations Board (the "Board") regarding the applicability of the National Labor Relations Act, 29 U.S.C. §§ 151-169 (the "NLRA") to the activities of the Chickasaw Nation. Through this brief, the Choctaw Nation seeks to place the treaties referenced in the General Counsel's Brief between the Choctaw and Chickasaw Nations and the United States in their historical context. Interpretation of the terms of the treaties at issue is dependent on an understanding of the historical context in which the treaties were negotiated and made, as well as an understanding of the way in which they were understood by the Choctaw and Chickasaw that negotiated them.

The historical context in which each of the treaties at issue was made demonstrates that they were intended by the Choctaw and Chickasaw to assure that the Choctaw and Chickasaw would remain sovereign nations. The Choctaw and Chickasaw were forced to move from their ancestral homelands in the southern United States to what is now the State of Oklahoma. They agreed to do so only after it became clear that the federal government would no longer protect their ancestral lands east of the Mississippi River from encroachment by westward moving settlers, or from state governments that sought to abolish all vestiges of tribal identity and life. In each treaty the Choctaw and Chickasaw carefully preserved their independent tribal identities, and assured that they were free to live under their own tribal governments, laws and customs, and would not be subject to regulation by any state, territory, or the federal government.

In return for their agreement to cede control over their ancestral lands east of the Mississippi River, each treaty guaranteed the Choctaw and Chickasaw Nations the power to exclude non-members from the land granted to them in order to protect their sovereignty, tribal form of government, laws, cultural identity, customs and way of life. Although the treaties recognize the plenary power of the United States under the Constitution to pass laws affecting the Choctaw and Chickasaw Nations, the treaties limit the use of such power to laws regulating Indian affairs, and thereby expressly recognize the ongoing relationship of trust between the United States and the Choctaw and Chickasaw Tribes as a whole.

The breadth and scope of the sovereignty guaranteed to the Choctaw and Chickasaw Nations under these treaties has repeatedly been recognized by the United States Supreme Court to be ***exceptional***. *Montana v. United States,* 450 U.S. 544, 555 n. 5 (1981); *Choctaw Nation v. Oklahoma,* 397 U.S. 620, 631-36 (1970). Despite this, the General Counsel's Brief engages in only a cursory examination of the language used in a few articles of the treaties to erroneously conclude that they can be read to acknowledge an agreement on the part of the Choctaw and Chickasaw Nations to be subject to all of the laws of the United States of general application. This argument results from a patent misreading of the language of the treaties. Application of the NLRA to the Chickasaw Nation is not consistent with the terms of the treaties. Rather, it would result in the abrogation by implication of express treaty rights guaranteed to the Choctaw and Chickasaw Nations. The abrogation of express treaty rights in this manner is contrary to existing United States Supreme Court precedent. *See, e.g., United States v. Dion,* 476 U.S. 734, 738-39 (1986) (because Indian treaty rights are too fundamental to easily be cast aside, congressional abrogation must be "clear and plain," and absent explicit statutory language,

requires at a minimum clear and reliable evidence of congressional intent in the legislative history of the statute).

The General Counsel's Brief also fails to interpret the treaties in the manner most favorable to the Choctaw and Chickasaw Nations, despite express treaty language requiring it to do so. *See,* Treaty of Dancing Rabbit Creek, art. 18, Exhibit A at p. 6. Further, a long line of existing Supreme Court precedent makes clear that even where such express treaty language does not exist, Indian treaties are not to be interpreted narrowly, but are to be construed so as to generously recognize the full obligation of the United States to protect the interests of a dependent people. *Peoria Tribe of Indians of Oklahoma v. United States,* 390 U.S. 468, 472-73 (1968). Thus, even absent express treaty language such as that referenced above, all doubtful expressions in the treaties at issue must be resolved in favor of the Choctaw and Chickasaw Nations, and not in favor of the application of federal law as argued in the General Counsel's Brief. *Choctaw Nation,* 397 U.S. at 631.

Finally, the Choctaw Nation offers this brief to explain how the treaty terms cited at pp. 8-13 of the General Counsel's Brief would naturally have been understood by the Choctaw and Chickasaw Indians at the time the treaties were entered into. The circumstances under which the treaties at issue were negotiated and made are critical. The United States Supreme Court has repeatedly stressed that "treaties with the Indians must be interpreted as they would have understood them . . . and any doubtful expressions in them should be resolved in the Indians' favor." *See, e.g., Choctaw Nation v. Oklahoma*, 397 U.S. 620, 630-31 (1970), *citing Jones v. Meehan*, 175 U.S. 1, 11 (1899), and *Alaska Pacific Fisheries v. United States*, 248 U.S. 78, 89 (1918). As the Supreme Court has made clear, "[t]he Indian Nations did not seek out the United States and agree upon an exchange of lands in an arm's-length transaction. Rather, treaties were

imposed upon them and they had no choice but to consent." *Choctaw Nation,* 397 U.S. at 630-31.

In sum, there is no valid construction of the treaties at issue that would support the position argued in the General Counsel's Brief. The treaty language clearly reflects the understanding of the Choctaw or Chickasaw that they would not be subject to the laws of the United States of general application. Further, the power of the United States to legislate with respect to the Choctaw and Chickasaw is limited by the treaties to laws regulating Indian affairs. The General Counsel's Brief makes no effort to place the treaties in historical context, or to explain how these treaties, literally forced on the Choctaw and Chickasaw Nations, can possibly have been understood by the Choctaw and Chickasaw Nations to have reflected an agreement to subjugate themselves to all federal law of general application. This is because historical context that gave rise to these treaties reflects the exact opposite. The Choctaw and Chickasaw entered into these treaties with the United States based upon express assurances from the federal government that by doing so they could retain their sovereignty and tribal identities, and remain autonomous nations, free of state or federal interference.

ARGUMENT AND AUTHORITY

I. The Historical Context in Which the Treaties at Issue Were Negotiated and Entered Into by the Choctaw and Chickasaw Nations.

Long before the arrival of European settlers, the Choctaw people lived under their own tribal government and way of life on ancestral land that comprised a large portion of what is now the State of Mississippi. Following the Revolutionary War, the newly-formed United States of America faced the same problem that had earlier plagued the British: how to win the allegiance of the Indian tribes. As a result, the United States sent Commissioners to Hopewell, a small settlement on the Keowee River in South Carolina, to negotiate treaties with several Indian

nations, including the Choctaw Nation. This resulted in the first treaty of peace and friendship between the United States and the Choctaw Nation, the Treaty of Hopewell, January 3, 1786, 7 Stat. 21.

At the time, the Choctaw people were primarily an agrarian society, widely recognized for their farming abilities. After clearing the lands around their villages, they planted maize (their staple crop), beans, pumpkins and melons. William Bartram, an English botanist who visited the Gulf Coast of Mississippi in 1777, described the Choctaw as the "most ingenious and industrious husbandmen, having large plantations, or country farms, where they employ much of their time in agricultural improvements, . . . by which means their territories are more generally cultivated, and better inhabited, than any other Indian republic that we know of." William Bartram, *The Travels of William Bartram* (Digireads.com, 2011), p. 244. In fact, the Choctaws were capable of raising so much corn that they actually produced a surplus which they sold, for a substantial profit, to their neighbors. Further, with ample food at their disposal, the Choctaw were able to support a larger population than other tribes, and used their surplus corn to raise large herds of cattle. Here again, they achieved noteworthy success and annually produced enough stock to sell many head not only to other Indian nations, but to white settlers as well. Robert S. Cotterill, *The Southern Indians: The Story of the Civilized Tribes Before Removal*, (Univ. of Oklahoma Press, 1954), p. 10.

By the advent of the nineteenth century, fueled in part by the explosive development of the cotton economy, the United States became anxious to secure the lands occupied by the Choctaw Nation in order to allow for westward expansion of immigrants. It was believed that the Louisiana Purchase provided a reasonably accessible place to which the southern Indian tribes, including the Choctaw, could be moved. For example, within a year after the Louisiana

Purchase was made, Congress passed the Act of March 26, 1804, entitled "An Act Erecting Louisiana Into Two Territories and Providing For the Temporary Government Thereof," Statutes at Large, 8th Congress, 1st Session, Ch. 38, p. 283 (1804). Section 15 of that Act provided: "The President of the United States is hereby authorized to stipulate with any Indian Tribes owning lands on the east side of the Mississippi, and residing thereon, for an exchange of lands, the property of the United States, on the west side of the Mississippi, in case the said tribes shall remove and settle thereon . . . ." *Id.* at 289.

In response to continued settlement by westward immigrants, and pressure from the United States, the Choctaw Nation, in an attempt to avoid what proved to be their fate, entered into a series of treaties, gradually relinquishing their claims to their ancestral lands in order to make way for this expansion. *See,* Treaty at Fort Adams, 7 Stat. 66 (1801) (two and half million acres ceded); Treaty at Fort Confederation, 7 Stat. 73 (1802) (establishment of boundaries generally); Treaty at Hoe-Buckin-Too-Pa, 7 Stat. 80 (1803) (nine hundred thousand acres in conformity with the Fort Confederation agreement); Treaty at Mt. Dexter, 7 Stat. 98 (1805) (four million acres); Treaty at Fort St. Stephens, 7 Stat. 152 (1816) (ceding relatively small tract where Columbus, Mississippi now stands).

Despite these concessions, when Mississippi became a state on December 10, 1817, the Choctaw still retained claims, recognized by the federal government, to more than three-quarters of the land within the State of Mississippi's boundaries. Over the next ten to twelve years, the popular pressure to make these lands available to non-Indian settlement continued. This pressure, together with the responsibility to the Choctaw Nation felt by some in the federal government, combined to shape federal policy toward the Choctaw Nation. This policy was aimed at persuading the Choctaw Nation to give up their ancestral lands in Mississippi

completely and to remove themselves to new lands in what is now part of the States of Oklahoma and Arkansas.

The first attempt to effectuate this policy, the Treaty at Doak's Stand, 7 Stat. 210 (1820), called for an exchange of more than five million acres between the Choctaw and the United States. However, before the Choctaws had time to enter into possession of their new territory, complications arose when it was discovered that much of the land promised to them in western Arkansas had already been settled. As a result, most Choctaw Indians remained in Mississippi. The federal government, realizing the difficulty of dislodging the settlers that were already in place in western Arkansas, thereafter induced the Choctaw Nation to relinquish the land originally guaranteed to them in Arkansas. *Choctaw Nation v. Oklahoma,* 397 U.S. 620, 624 (1970). To this end, a delegation of Choctaws were invited to Washington in 1824 to negotiate a treaty that relocated the eastern boundary of the land originally ceded to them by the Treaty at Doak's Stand.

This meeting resulted in a treaty dated January 20, 1825, 7 Stat. 234, by which the Choctaw Nation ceded back to the United States "all that portion of the land ceded to them by the second article of the Treaty of Doak's Stand, as aforesaid, lying east of a line beginning on the Arkansas, one hundred paces east of Fort Smith, and running thence due south to Red River; it being understood that this line shall constitute, and remain, the permanent boundary between the United States and the Choctaws; *and the United States agreeing to remove such citizens as may be settled on the west side to the east side of said line and prevent future settlements from being made on the west thereof.*" (emphasis added). Due to the ongoing complications surrounding the ability of the United States to secure the land promised to them, the immigration of the Choctaw Nation to lands west of the Mississippi prior to 1829 largely failed to occur. It is

estimated that by 1829 only about one hundred fifty Choctaws had been induced to settle in their new territory. *See,* Angie Debo, *The Rise and Fall of the Choctaw Republic* (Univ. of Oklahoma Press, 1961), p. 50.

In 1826, General William Clark, General Thomas Hinds, and General John Coffee, as Commissioners for the United States, held a counsel with the Choctaws in Florence, Alabama. In an address on November 11, 1826, they told the Choctaws:

> The United States have a large unsettled and unappropriated country on the west side of the great river in Mississippi, ***into which they do not intend that their white settlements shall extend.***

American State Papers, Indian Affairs, Vol. 2, p. 711 (1826). On November 13, 1826, the Commissioners submitted the terms upon which they were authorized to propose a cession by the Choctaws of their remaining lands in Mississippi for consideration by the Choctaws. *Id.* at 712.

Following the inauguration of Andrew Jackson as the seventh President of the United States on March 4, 1829, it became clear that the United States' policy regarding the forcible removal of the Indian nations, including the Choctaw, from the southern portion of the United States would change. In his first annual address to Congress on December 8, 1829, President Jackson stated that continued pressure from settlement of Choctaw lands in Mississippi would weaken the Choctaw, and that the Choctaw Nation would eventually meet the fate of the Mohegan and the Narragansett Indians, who long ago lost their tribal lands and identity. Journal of the United States Senate, 21st Cong., 1st Sess. 18-19 (1829). President Jackson stated that the only way to prevent this from happening was for the United States to set aside land west of the Mississippi River, to be guaranteed to the Indian tribes as long as they occupied the land. *Id.* Jackson made clear in his address that in such land, the Indian tribes would be free of white men except for a few soldiers who would be stationed in the area to preserve peace on the frontier. *Id.* Indians that remained east of the Mississippi River would be subject to the laws of several

states and become "merged in the mass of our population." John Bartlett Meserve, "The Indian Removal Message of President Jackson," Chronicles of Oklahoma, Vol. 13, No. 1 (March, 1935), p. 65.

The citizens of Mississippi were not willing to wait for the success of the federal schemes for removal of the Choctaw Nation. In 1829, the Mississippi legislature provided for the extension of state laws over Choctaw and Chickasaw land adjacent to organized counties. Further, on January 19, 1830, the Mississippi legislature passed a law extending the laws of the State of Mississippi "over the persons and property of the Indians resident within its limits." All of the special "rights, privileges, immunities and franchises of the Indians" were repealed. Arthur H. DeRosier, Jr., *The Removal of the Choctaw Indians* (Univ. of Tennessee Press, 1999), p. 104.

In Washington, Congress debated whether the States had power to assert such jurisdiction over the Indian tribes, and if so whether any such assertions were wise. *See, e.g.,* Register of Debates in Congress, 21st Congress, 1st Session, pp. 580-83 (1830). These debates culminated on May 28, 1830, with the passage of the Indian Removal Act of 1830, 4 Stat. 411. These events made it evident to the Choctaw Nation that the promises of the United States to protect its sovereignty over its ancestral lands had been compromised, and that the United States was unable or unwilling to prevent the States and their citizens from violating Indian rights. *See, Choctaw Nation v. Oklahoma*, 397 U.S. 620, 625 (1970). Moreover, it became clear that argument made in President Jackson's address to Congress would come to pass and the Choctaw would lose their tribal lands and identity if they continued to remain in Mississippi.

On June 1, 1830, four days after the passage of the Removal Act of 1830, Secretary of War, John H. Eaton, at the instruction of President Jackson, wrote to the Chickasaws and the

Choctaws, inviting them to meet with President Jackson at Franklin, Tennessee, on August 23, 1830. In an effort to convince the Choctaw and Chickasaw to cede their ancestral lands east of the Mississippi, President Jackson told those assembled at this meeting that he deplored the inability of the federal government to protect the Indians from intrusions of the white settlers and the harassments of governments of the southern states, and he recounted the desires of the Indians to live in peace and maintain their tribal existence. Explaining the terms on which the United States was willing to enter into a treaty with the Choctaw and Chickasaw Nations, President Jackson stated to those assembled:

> By an act of Congress, it was placed in his [the President's] power to extend justice to the Indians; to pay the expenses of their removal; to support them for twelve months; and to give them a grant for lands which should endure "as long as the grass grows, or water runs." A determination was taken immediately to advise his red children of the means which were thus placed at his disposal, to render them happy and preserve them as nations.
>
> . . . .
>
> His earnest desire is, ***that you may be perpetuated and preserved as a nation***; and this, he believes, can only be done and secured by your consent to remove to a country beyond the Mississippi, which for the happiness of our red friends, was laid out by the Government a long time since, and to which it was expected, ere this, they would have gone.
>
> . . . .
>
> Brothers, listen: The only plan by which this can be done, and tranquility for your people obtained, is, that you pass across the Mississippi to a country in all respects equal, if not superior, to the one you have. ***Your great father will give it to you for ever, that it may belong to you and your children while you shall exist as a nation, free from all interruption***.
>
> . . . .
>
> Young chiefs! forget the prejudices you feel for the soil of your birth, ***and go to land where you can preserve your people as a nation. Peace invites you there; annoyance will be left behind;***

> ***within your limits no State or territorial authority will be permitted; intruders, traders and above all, ardent spirits, so destructive to health and morals, will be kept from among you, only as the laws and ordinances of your nation may sanction their admission.***

See, Senate Doc. No. 512, 23rd Congress, 1st Session, Vol. 2, 240-242 (1830) (emphasis added).

Immediately following this meeting in Franklin, Tennessee, Secretary Eaton and General Coffee were dispatched by President Jackson to Dancing Rabbit Creek in Mississippi where they met with the Choctaws on September 15, 1830. Again, on September 18, 1830, they exhorted the assembled Choctaws:

> . . . if you are satisfied that under such condition of things you cannot be happy, consent to remove beyond the Mississippi, ***where you will be away from the white people, and from their laws, and be able to live under your own.***
>
> . . . .
>
> ***and your white father can bring you forth; and can keep the white mans laws from interrupting and disturbing you***; and there I will guard you against all enemies, whether they be white or red; and no State or Territory will be created.
>
> . . . .
>
> Brothers: Hesitate not, determine what you mean to do on this important occasion; record the votes of your head-men, and let us know who amongst you are willing to remove and who are opposed. The sense of the nation will thus be correctly ascertained, and the question which has so much agitated you be finally put to rest: say it is your determination to remain, and the subject is done with – we shall then trouble you with our talks no more. But decide to remove, and liberal provisions will be made to carry you to a country where you can be happy, and where already your fathers and brothers have gone in peace to reside. It is a desirable region, double in extent to the one you occupy, and large and fertile enough for twice or three times the number of people you have. There your great father can be your friend; ***there he can keep the white man's law from interrupting and disturbing you; and there, too, he will guard you against all enemies, whether they be white or red. There no State or Territory will be created and he will have it in his power to protect you fully in your***

> ***usages, laws, and customs. Here he cannot do these things, because neither he nor Congress possesses authority to prevent the States from extending their jurisdiction over you, and throughout their limits.***

Senate Doc. No. 512, 23rd Congress, 1st Session, Vol. 2, pp. 256-258 (1830) (emphasis added).

Thus, faced with the prospect of losing both their ancestral lands and their way of life, and based on the assurances given by the President of the United States and the Commissioners appointed by the President that in their new land, they would remain "free of the white man's law," protected fully in their usages, laws and customs, and free of "intruders and traders," the Choctaws agreed in the Treaty of Dancing Rabbit Creek, September 27, 1830, 7 Stat. 333, to leave their ancestral home in Mississippi, and to move the new lands west of the Arkansas Territory.

The Choctaw left their ancestral homeland with a heavy heart and because they believed it was the only way to preserve their tribal sovereignty, laws and culture. George W. Harkins, a well-known Choctaw leader of the time, in his 1831 "Farewell Letter to the American People," denounced the removal of the Choctaw. His letter was widely published in American newspapers, and to this day is widely regarded as one of the most important documents of Native American history. In it he states:

> It is with considerable diffidence that I attempt to address the American people, knowing and feeling sensibly my incompetency; and believing that your highly and well improved minds would not be well entertained by the address of a Choctaw . . . . We were hedged in by two evils, and we chose that which we thought the least. . . . ***We as Choctaws rather chose to suffer and be free, than live under the degrading influence of laws, which our voice could not be heard in their formation.***
>
> . . . .
>
> Amid the gloom and horrors of the present separation, we are cheered with a hope that ere long we shall reach our destined land, ***and that nothing short of the basest acts of treachery will ever be***

> ***able to wrest it from us, and that we may live free.*** Although your ancestors won freedom on the field of danger and glory, our ancestors owned it as their birthright . . . .

Thus, when viewed historically, it is clear that the Treaty of Dancing Rabbit Creek, as well as the subsequent Treaties of Washington of 1855 and 1866, cited in the General Counsel's Brief at pages 8-13, are in fact the shameful results of a policy of ethnic cleansing engaged in by the United States from the 1820's to the 1860's, designed to push the Indian tribes, including the Choctaw and Chickasaw, out of their ancestral homelands east of the Mississippi River. The actual removal of the Choctaw Nation from Mississippi in 1831, 1832 and 1833 is now infamously known in American history as part of the "Trail of Tears." It was accompanied by misery, suffering and death from starvation, exposure and disease resulting from the mismanagement of the removal effort by the United States. In fact, Alexis de Tocqueville, the French philosopher, witnessed the removal of the Choctaw while in Memphis, Tennessee, in 1831. In his famous work *Democracy in America* he describes the removal:

> It was then the middle of winter, and the cold was unusually severe; the snow had frozen hard upon the ground, and the river was drifting huge masses of ice. The Indians had their families with them, and they brought in their train the wounded and the sick, with children newly born and old men upon the verge of death. They possessed neither tents nor wagons, but only their arms and some provisions. I saw them embark to pass the mighty river, and never will that solemn spectacle fade from my remembrance. No cry, no sob, was heard among the assembled crowd; all were silent. Their calamities were of ancient date, and they knew them to be irremediable.
>
> . . . .
>
> In the whole scene there was an air of ruin and destruction, something which betrayed a final and irrevocable adieu; one couldn't watch without feeling one's heart wrung. The Indians were tranquil, but somber and taciturn. There was one who could speak English and of whom I asked why the Chactas were leaving their

> country. "To be free," he answered, could never get any other reason out of him. We ... watch the expulsion ... of one of the most celebrated and ancient American peoples.

Alexis de Tocqueville, *Democracy in America.*

The treaties at issue in this case were imposed by the United States on the Choctaw and Chickasaw Nations. The Choctaw and Chickasaw Nations had no choice but to consent to these treaties or risk losing all vestiges of their sovereignty, tribal government, laws, culture and way of life. The Choctaw negotiating these treaties with the United States recognized that they must acquiesce in the demands of the United States or bear the responsibility for either the extermination of the Choctaw Nation, or the forced removal of their people by the United States under even more unfortunate circumstances.

II. The Treaty of Dancing Rabbit Creek.

Through the Treaty of Dancing Rabbit Creek, the Choctaw Nation agreed to cede to the United States all lands still occupied by them east of the Mississippi River, an area comprised of more than ten million acres. Treaty of Dancing Rabbit Creek, September 27, 1830, 7 Stat. 333, art. 3, Exhibit A at p. 3. In exchange, the United States granted to the Choctaw Nation an area of its western territory that encompasses what is today approximately the southern third of the State of Oklahoma. Given the history referenced above, the Choctaws desired a guarantee that they would not be forced again to move, and the United States therefore promised to convey:

> to the Choctaw Nation a tract of country west of the Mississippi River, ***in fee simple to them and their descendants, to inure to them while they shall exist as a nation and live on it*** . . . .

Treaty of Dancing Rabbit Creek, art. 2, Exhibit A, at p. 2. Equally important to the Choctaws negotiating the treaty was that, as promised by President Jackson and the Commissioners appointed by him negotiate on behalf of the United States, the Choctaw would remain free of

state, territorial or federal law and be free to be governed by their own "usages, laws and customs" in their new land. Accordingly, the Treaty of Dancing Rabbit Creek provides:

> ***The Government and people of the United States are hereby obliged to secure to the said Choctaw Nation . . . the jurisdiction and government of all the persons and property that may be within their limits west***, so that no Territory or State shall ever have a right to pass laws for the government of the Choctaw Nation of Red People and their descendants; and that no part of the land granted them shall ever be embraced in any Territory of State; ***but the U.S. shall forever secure said Choctaw Nation from and against, all laws except such as from time to time may be enacted in their own National Councils***, not inconsistent with the Constitution Treaties, and Laws of the United States; and ***except such as may, and which have been enacted by Congress, to the extent that Congress under the Constitution are required to exercise a legislation over Indian Affairs.***

Id., art. 4, Exhibit A at p. 3 (emphasis added).

In recognition of the fact that Choctaw Nation was intended to operate as a separate, sovereign nation, free of federal law within the land granted to it by the United States, it was deemed necessary by the United States to include a provision in Article 11 of the Treaty of Dancing Rabbit Creek permitting the United States to "establish one or more Post Offices in said Nation, and may establish such military post roads, and posts, as they may consider necessary."

Article 12 of the Treaty confirmed the power of the Choctaw to exclude non-members from their tribal lands in order to protect their sovereignty, laws, cultural identity, customs and way of life. It obligates the United States to remove all intruders from the land granted to the Choctaw Nation, and to keep all such intruders outside of it. Again, as discussed above, those negotiating for the Choctaw understood that the land to which they were moving would be free of "intruders and traders" so that they could protect their sovereignty and identity as a tribe from encroachment by the "white man's law." The concept of separateness from intruders and from state and federal law is so central to the concept of the treaty, that in Article 18, which provides

for a survey of the lands granted to the Choctaw Nation, it was deemed necessary to note that such "surveyors may enter the Choctaw Country for that purpose, conducting themselves properly and disturbing or interrupting none of the Choctaw people. ***But no person is permitted to settle within the nation, or the lands to be sold before the Choctaws shall remove***." *Id.*, art. 18, Exhibit A, at p. 6 (emphasis added). Article 18 additionally makes clear that wherever any well-founded doubt shall arise as to the meaning of the treaty, ***"it shall be construed most favorably towards the Choctaws."*** *Id.* (emphasis added).

III. The Treaty of Washington of 1855.

Following the Treaty of Dancing Rabbit Creek, and the relocation of the Choctaws in 1831, 1832, and 1833, a dispute existed between the Choctaw Nation and the United States regarding the western boundary of the land granted to the Choctaw Nation. Through the Treaty of Washington of 1855, June 22, 1855, 11 Stat. 611, between the Choctaw and Chickasaw Nations and the United States, the Choctaw and Chickasaw Nations, among other things: (1) relinquished any claim to territory west of the 100th degree west longitude; (2) agreed to the creation of a separate district for the Chickasaw Nation within the lands granted to the Choctaw Nation in the Treaty of Dancing Rabbit Creek; and (3) agreed to lease to the United States the land west of the 98th degree of west longitude for the settlement of other Indian tribes. In reaching this agreement, Article 7 of the Treaty of Washington of 1855 again makes clear:

> So far as may be compatible with the Constitution of the United States and the laws made in pursuance thereof, regulating trade and intercourse with the Indian tribes, ***the Choctaws and Chickasaws shall be secured in the unrestricted right of self-government, and full jurisdiction, over persons and property, within their respective limits***; . . . ***and all persons, not being citizens or members of either tribe, found within their limits, shall be considered intruders, and be removed from, and kept out of the same . . . .***

Treaty of Washington of 1855, art. 7, Exhibit B at p. 3 (emphasis added). Article 21 of the treaty confirms that it supersedes and takes the place of former treaties between the United States and the Choctaw and Chickasaw Nations only to the extent the terms of the earlier treaties are inconsistent with its terms. *Id.* at art. 21, Exhibit B at p. 6.

It is clear that the Treaty of Washington of 1855 was not intended to affect either the sovereignty or the right of the Choctaw and Chickasaw to exclude non-members from the land granted to them, as guaranteed by the Treaty of Dancing Rabbit Creek. In fact, the Treaty of Washington of 1855 unequivocally reaffirms the commitment of the United States to the Choctaw and Chickasaw Nations to guarantee their "unrestricted right of self-government, and full jurisdiction, over persons and property, within their respective limits" subject only to the laws of the United States regulating trade and intercourse with the Indian tribes pursuant to the Indian Commerce clause of the United States Constitution. U.S. Const. art. I, sec. 8. Moreover, the United States also again affirmed its obligation to preserve the sovereignty of Choctaw and Chickasaw Nations over the land granted to them, by categorizing all persons not citizens or members of the tribes as "intruders" who shall be removed and kept out of land granted to the Choctaw and Chickasaw by the United States.

IV. The Treaty of Washington of 1866.

The construction of the cited provisions of the Treaty of Washington of 1866, 14 Stat. 769, in the General Counsel's Brief are particularly troubling given that they obviously reflect a lack of understanding of the history of the negotiations leading up to that treaty. The Treaty of Washington of 1866 arose as a consequence of the decision of the Choctaw and Chickasaw Nations to ally with the Confederate States during the Civil War. Following the end of the Civil War, the United States called the Chickasaw and Choctaw Nations to a council on September 8, 1865. Among the demands made to the Choctaw and Chickasaw Nations at this council were

that a new treaty be made stating that the Choctaw and Chickasaw, having been "induced by the machinations of the emissaries" of the Confederacy to throw off their allegiance to the federal government, were now ready to make peace *and acknowledge the "exclusive jurisdiction" of the United States*. Angie Debo, *The Rise and Fall of the Choctaw Republic* (Univ. of Oklahoma Press, 2nd ed. 1961) at p. 86.

The Choctaw and Chickasaw Nations responded to the demands of the United States on September 20, 1865. They stated that they were willing accept the propositions of the Commissioners as the basis for negotiations on a treaty, with the understanding that in acknowledging the "exclusive jurisdiction" of the United States, *they were not admitting the right of interference in any of their internal affairs except with respect to slavery. Id.* at p. 87. Thereafter, on October 7, 1865, a preliminary draft treaty was conditionally ratified that accepted the interpretation the Choctaw and Chickasaw delegates had placed upon the acknowledgement of the "exclusive jurisdiction" of the United States. *Id.* at 87-88.

Notably, any mention of the "exclusive jurisdiction" of the United States was completely dropped from the final version of the Treaty of Washington of 1866. Rather, it generally provides for the surrender of the "leased district" created in the Treaty of Washington of 1855 in return for a payment of $300,000 from the United States, to be divided between the Choctaw and Chickasaw Nations in a three-two-one ratio if they should adopted the freed slaves, or to be expended for the benefit of the freed slaves if the Choctaw or Chickasaw Nations, by failing to adopt them within two years, decreed their removal from the Choctaw and Chickasaw Nations. The treaty granted right-of-ways for a north-south and east-west railroad across the Indian Territory, and contains an elaborate provision for an annual council of the various Indian nations located in the Indian Territory, which it was hoped would, in time, absorb the separate tribal

governments. The United States also hoped to induce the Choctaw and Chickasaw Nations to accept allotments, and the treaty contained minute specifications to govern the survey and division of the land, provided the Choctaw and Chickasaw Nations should adopt the system of private ownership. *Id.* at p. 89.

Thus, the final treaty language actually demonstrates that the Choctaw and Chickasaw specifically refused to submit to the "exclusive jurisdiction" of the United States. The only concessions made by the Choctaw and Chickasaw Nations in the treaty were the relinquishment of the leased district; possible restitution to Choctaws and traders loyal to the Union during the Civil War; an agreement to permit Kansas Indians to re-settle in the land granted to the Choctaw and Chickasaw (a provision that was never carried out); and the loss of their former slaves. Moreover, to make clear that the nations retained the sovereignty over the land granted to them, the Treaty of Washington of 1866 again states that:

> The Choctaws and Chickasaws agree to such legislation as Congress and the President of the United States may deem necessary for the better administration of justice and the protection of the rights of person and property within the Indian Territory; ***provided, however, Such legislation shall not in anywise interfere with or annul their present tribal organization, or their respective legislatures or judiciaries, or the rights, laws, privileges, or customs of the Choctaw and Chickasaw Nations respectively.***

Treaty of Washington of 1866, art. 7, Exhibit C, at p. 4.

Article 10 of the treaty makes clear that the United States reaffirms "all obligations arising out of treaty stipulations or acts of legislation with regard to the Choctaw and Chickasaw Nations, entered into prior to the late rebellion [the Civil War], and in force at that time, not inconsistent herewith . . . ." *Id.* at art. 10, Exhibit C, at p. 6.

Finally, the treaty confirms that:

> All the rights, privileges, and immunities heretofore possessed by said nations or individuals thereof, or to which they were entitled under the treaties and legislation heretofore made and had in connection with them, shall be, and are hereby declared to be, in full force, so far as they are consistent with the provisions of this treaty.

Id. at art. 45, Exhibit C, p. 14.

Like the Treaty of Dancing Rabbit Creek and the Treaty of Washington of 1855 before it, it is clear that the Treaty of Washington of 1866 was not intended to affect either the sovereignty of the Choctaw and Chickasaw over the land granted to them, or their right to exclude non-members from that land, as originally guaranteed by the Treaty of Dancing Rabbit Creek. If anything, the Treaty of Washington of 1855 reaffirmed the commitment of the United States to the Choctaw and Chickasaw Nations of "the unrestricted right of self-government, and full jurisdiction, over persons and property, within their respective limits" subject only to the laws of the United States regulating trade and intercourse with the Indian tribes pursuant to the Indian Commerce clause of the United States Constitution, U.S. Const. art. I, sec. 8. Moreover, the United States also again affirmed its obligation to preserve the sovereignty of Choctaw and Chickasaw Nations over the land granted to them, by categorizing all persons not citizens or members of the tribes as intruders who would be removed and kept out of land granted to them.

V. Application of the NLRA to the Choctaw and Chickasaw Nations Would Abrogate Rights Guaranteed Them Under the Applicable Treaties.

Apart from its complete failure to provide any historical context in which the Treaty of Dancing Rabbit Creek, the Treaty of Washington of 1855 and the Treaty of Washington of 1866 were negotiated and made, the General Counsel's Brief fails to supply the Court with any legal analysis of the terms of these treaties, other than a citation to *Oklahoma Tax Comm'n v. Chickasaw Nation*, 515 U.S. 450 (1995). However, *Chickasaw Nation* did not concern the

application of federal law to the Chickasaw Nation. Rather, it concerned only whether the State of Oklahoma could apply its motor fuels tax to fuel sold by the Chickasaw in Indian country, and whether the State of Oklahoma could tax the income of tribal members working for the tribe, but that reside in the State of Oklahoma outside of Indian country. Given that the only issue presented by the *Chickasaw Nation* case concerned the applicability of state law to the Chickasaw Nation, it is not surprising that the Supreme Court, when considering the language of Article 4 of the Treaty of Dancing Rabbit Creek, found that it was clearly intended to protect the Chickasaw Nation "from, and against, all [such] laws . . . ." *Oklahoma Tax Comm'n*, 515 U.S. at 465. The applicability of state law to the activities of the Chickasaw Nation was the only issue presented, and there was no reason for the Court to go beyond the facts presented to consider whether this same prohibition would similarly prohibit federal laws of general application such as the NLRA.

The citation in the General Counsel's Brief to the minority opinion of Justice Breyer in the *Oklahoma Tax Comm'n* case is equally puzzling given that Justice Breyer indicates that he would have construed this treaty provision even more broadly than did the majority, to exclude the ability of the State of Oklahoma even to tax wages paid by the Chickasaw Nation to members of the tribe who work for the tribe within Indian country, but who live outside of Indian country. Justice Breyer's minority opinion makes equally clear that the extent to which Article 4 of the Treaty of Dancing Rabbit Creek limits federal power over the Chickasaw Nation was not at issue, noting that the Treaty of Dancing Rabbit Creek obligated the United States to secure the Chickasaw Nation from and against "all laws" except "those the Tribe made itself (***and certain others not relevant here***)." *Id.* at 468 (emphasis added).

In *Ex Parte Crow Dog*, 109 U.S. 556 (1883), the Supreme Court was called upon to construe language in a treaty between the United States and the Sioux Nation containing language similar to that found in the treaties at issue herein. At issue in *Crow Dog* was treaty language stating that Congress, by appropriate legislation, would secure to the Sioux Nation an orderly government, and the Sioux Nation "shall be subject to the laws of the United States, and each individual shall be protected in his rights of property, person, and life . . . ." In *Crow Dog,* the Supreme Court construed this language to be nothing more than a pledge by the United States, contracting with "a distinct political body," to introduce among the Indians the "highest and best of all" of the "arts of civilization" that of "self-government." *Crow Dog*, 109 U.S. at 568-69.

More importantly, the Supreme Court held that the language making Sioux Nation subject to the laws of the United States "cannot, we think, have any more extensive meaning than an acknowledgment of their allegiance as Indians, to the laws of the United States, ***made or to be made in the exercise of legislative authority over them as such***." *Id.* (emphasis added). Construing the similar treaty language, the Supreme Court states that "***it was no part of the design to treat the individuals as separately responsible and amenable in all their personal and domestic relations with each other, to the general laws of the United States, outside of those which were enacted expressly with reference to them as members of an Indian tribe***." *Id.* (emphasis added). Quoting from *United States v. Joseph*, 94 U.S. 614, 617 (1876), the Supreme Court in *Crow Dog* describes the general policy of the federal government towards the Indian tribes as recognizing the existence of:

> semi-independent tribes ***whom our government has always recognized as exempt from our laws, whether within or without the limits of an organized State or Territory***, and, in regard to their domestic government, left to their own rules and traditions; in

> whom we have recognized the capacity to make treaties, ***and with whom the governments, state and national, deal, with few exceptions only, in their national or tribal character, and not as individuals.***

Id. at 572.

The General Counsel's Brief also fails to appropriately take into consideration the unique and exceptional scope of rights guaranteed to the Choctaw and Chickasaw Nations under the Treaty of Dancing Rabbit Creek and the Treaties of Washington of 1855 and 1866. For example, in *Atlantic & Pacific R.R. Co. v. Mingus*, 165 U.S. 413 (1897), the Supreme Court relied on the rights granted to the Choctaw and Chickasaw under the Treaty of Dancing Rabbit Creek to uphold a statutory forfeiture of land previously conveyed by the United States to a railroad company on the condition that it complete a lengthy railroad within a certain time period. In *Mingus,* the railroad company defended by arguing that part of the proposed route lay through the Indian country ceded, in part, to the Choctaw and Chickasaw tribes. It contended that in the original statutory grant, Congress had promised that it would extinguish Indian ownership of the land needed to complete the railway; but that Congress had failed to do so, thereby preventing the railroad company from completing the railroad.

Citing, among others, the Treaty of Dancing Rabbit Creek, the Supreme Court in *Mingus* explained that although for certain purposes the land in question had been considered to be within the jurisdiction of the United States, "reference to some of the treaties, under which it is held by the Indians, ***indicates that it stands in an entirely different relation to the United States from other Territories, and that for most purposes it is to be considered an independent country***." *Mingus*, 165 U.S. at 435-36 (emphasis added). After quoting from Article 4 of the Treaty of Dancing Rabbit Creek, the Supreme Court in *Mingus* states:

> Under the guaranties of these and other similar treaties, ***the Indians have proceeded to establish and carry on independent governments of their own, enacting and executing their own laws, punishing their own criminals, appointing their own officers, raising and expending their own revenues***.

Id. at 436 (emphasis added). Given these treaty rights, guaranteed to the Choctaw and Chickasaw Nations (and other Indian tribes), the Supreme Court observes that "it could scarcely be expected that the United States should be called upon to extinguish, for the benefit of a railroad company, which had chosen to locate its route through this territory, a title guaranteed to the Indians by solemn treaties, and which had been possessed by them for upwards of 40 years, with the powers of an almost independent government." *Id.* at 437.

The Supreme Court then finds, again consistent with the terms of Article 4 of the Treaty of Dancing Rabbit Creek (as well as with similar language found in the Treaties of Washington of 1855 and 1866), that the United States' power to legislate the extinguishment of the Choctaw and Chickasaw title to this land, and over which they had been exercising almost complete sovereignty, could occur only in the event of a determination by Congress that such extinguishment "was consistent with public policy and the welfare of the Indians . . . ." *Id.* Absent such a determination, Congress was powerless to extinguish the rights of the Choctaw and Chickasaw (and other tribes) guaranteed them in their treaties with the United States. The only manner in which this land might be acquired was by voluntary cession by the Choctaw and Chickasaw:

> Indeed, it is doubtful if the engagement of the government amounted to anything more than an expression of its willingness to assist the company in acquiring Indian titles, if the company could persuade the Indians to relinquish such titles, and the government considered it consonant with their welfare to do so.

Id. at 438-39.

As *Mingus* makes abundantly clear, the language used in the treaties at issue in this case, acknowledging that the Choctaw and Chickasaw Nations are subject to laws enacted by Congress to the extent that "Congress under the Constitution is required to exercise legislation over Indian affairs," or to the extent that such laws "regulate trade and intercourse with the Indian tribes," or are comprised of such laws "as Congress and the President may deem necessary for the better administration of justice and the protection for the rights of persons and property within the Indian Territory . . . " refer only to laws passed by Congress that expressly apply to the Indian nations as a whole, and that are in the exercise of the federal government's unique trust relationship with the Indian nations as such. Thus, the treaty language cited in the General Counsel's Brief recognizes nothing more than the unremarkable proposition that Congress can, in the exercise of its plenary power over Indian affairs, divest Indian tribes of their inherent sovereign authority. *United States v. Wheeler*, 435 U.S. 313, 322-23 (1978). However, to do so, Congress must clearly express its intent to so do. Further, the treaty language makes clear that the United States will use its power over Indian affairs only where such use is consistent with public policy and the welfare of the Choctaw and Chickasaw Nations as a whole. This is the only construction of this language which makes any sense in the historical context in which the treaties in question were negotiated.

Such a construction is also in accord with applicable law. Divestiture of the sovereign authority of an Indian tribe is disfavored as a matter of national policy and in recognition of the unique trust relationship that exists between the United States and Indian tribes. *County of Oneida v. Oneida Indian Nation*, 470 U.S. 226, 247 (1985) ("The canons of construction applicable in Indian law are rooted in the unique trust relationship between the United States and

the Indians."). As the United States Supreme Court recognized in *Choctaw Nation of Indians v. United States*, 318 U.S. 423, 431 (1943):

> Of course treaties are construed more liberally than private agreements, and to ascertain their meaning we may look beyond the written words to the history of the treaty, the negotiations and the practical construction adopted by the parties . . . . Especially is this true in interpreting treaties and agreements with the Indians; they are to be construed, so far as possible, ***in the sense in which the Indians understood them, and "In a spirit which generously recognizes the full obligation of this nation to protect the interests of a dependent people."***

Accordingly, where an ambiguity exists (such as that posed by the NLRA's silence with respect to its application to Indian tribes), and there is no clear indication of congressional intent to abrogate Indian sovereignty rights (as manifested by the legislative history, or the existence of a comprehensive statutory plan), the special canons of construction to the benefit of Indian interest should be applied. *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 148-49 (1982).

In view of the applicable law, the treaty language in question cannot be construed, as the General Counsel's Brief argues, to express an intent that the Choctaw and Chickasaw Nations agreed to be subject to federal law of general application. Such a suggestion would clearly have been abhorrent to the members of the Choctaw and Chickasaw Nations who negotiated these treaties. Further, such a construction of the treaties at issue in this case would defy history, and ignore the manner in which the Choctaw and Chickasaw Nations zealously protected their right to govern themselves, according to their own laws and customs, without interference by the state, territorial or federal government.

The United States Supreme Court recognized no less in *United States v. John*, 437 U.S. 634 (1978). In *John*, the Supreme Court recounts the history leading up to the Treaty of Dancing Rabbit Creek, correctly observing that the Choctaw felt forced to enter into the treaty because they had concluded "that the Federal Government no longer would stand between the States and

the Indians." *John*, 437 U.S. at 638-40. More importantly, referencing the intention of the United States and the Choctaw as expressed in the Treaty of Dancing Rabbit Creek, the Supreme Court states:

> It provided that the Choctaws would cede to the United States all lands still occupied by them east of the Mississippi, more than ten million acres. They were to remove to lands west of the river, ***where they would remain perpetually free of federal or state control, by the fall of 1833.***"

Id. at 641. Accordingly, even the United States Supreme Court has observed that the intent of the Treaty of Dancing Rabbit Creek was to free the Choctaw and Chickasaw of both state and federal control.

Application of the NLRA to the Chickasaw Nation in this case would also abrogate the treaty rights of the Choctaw and Chickasaw Nations to exclude non-members. The right of the Chickasaw to exclude non-members under the treaties clearly serves to promote important federal policies designed to assure the Chickasaw Nation the right to tribal self-determination, economic development and cultural autonomy. In this regard, there is no question that tribal authority over the activities of non-Indians on reservation lands is an important part of tribal sovereignty. *See, Montana v. United States*, 450 U.S. 544, 565-66 (1981); *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134, 152-53 (1980).

In *Morris v. Hitchcock*, 194 U.S. 384, 389 (1904), the United States Supreme Court, interpreting Articles 7 and 14 of the Treaty of Washington of 1855 and Article 8 of the Treaty of Washington of 1866, held that these treaty provisions specifically permit the Chickasaw Nation "to control the presence within the territory assigned to it of persons who might otherwise be regarded as intruders" and further held that "the duty of the United States to protect the Indians from 'aggression by other Indians and white persons, not subject to their jurisdiction and laws,' has also been recognized." In *Morris,* the Supreme Court held that "it is not disputed that, under

the authority of these treaties, the Chickasaw Nation has exercised the power to attach conditions to the presence within its borders of persons who might otherwise not be entitled to remain within the tribal territory." *Id.*

Accordingly, the concept advanced in the General Counsel's Brief, of the ability of the federal government to regulate commercial enterprises operating on tribal land previously conveyed in fee simple to the Choctaw and Chickasaw Nations is antithetical to the sovereign power to exclude non-members granted to the Choctaw and Chickasaw Nations in the treaties at issue. As the Supreme Court held in *Morris, supra,* the treaties at issue in this case permit the Chickasaw Nation "to attach conditions to the presence of non-members" on tribal land as an attribute of their sovereignty. Moreover, the presence of individuals employed by the federal government in the lands granted to the Choctaw and Chickasaw Nations referenced in the treaties was intended to *protect* the Choctaw and Chickasaw Nations from further encroachment of their sovereign power, not to *subject* them to general federal regulation.

In *Donovan v. Navajo Forest Products Industries*, 692 F.2d 709, 711 (10th Cir. 1982), the Tenth Circuit Court of Appeals interpreted a treaty provision between the United States and the Navajo Tribe of Indians containing similar language permitting the Navajo to exclude non-members, but providing that "such officers, soldiers, agents and employees of the government . . . as may be authorized to enter upon Indian reservations in discharge of duties imposed by law, or the orders of the President" could remain. The Tenth Circuit interpreted the provision for employees of the government to remain to mean nothing more than:

> that in order to achieve an end to conflict and ensure peace, the United States Government agreed to leave the Navajos alone on their reservation to conduct their own affairs with a minimum of interference from non-Indians, and then only by those *expressly* authorized to enter upon the reservation. That, in our view, is the plain, unambiguous meaning of the Navajo treaty language . . . .

Donovan, 692 F.2d at 711-12 (emphasis in original).

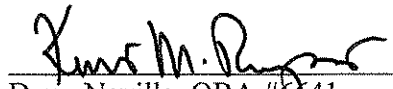
An identical interpretation of the treaty language used in the Treaty of Dancing Rabbit Creek, and the Treaties of Washington of 1855 and 1866, is applicable in this case. The historical context in which these treaties came into being, and the legal rules applicable to their interpretation, give rise to no reasonable interpretation other than that the Choctaw and Chickasaw Nations were seeking to be left alone to conduct their own affairs with a minimum of interference. Application of the NLRA to a tribally owned commercial enterprise located on tribal land would directly interfere with the Chickasaw Nation's treaty-protected right to exclude non-Indians from tribal lands. Given that the General Counsel's Brief does not dispute that neither the legislative history of the NLRA, nor its language, make any mention of Indian tribes, the NLRA is not applicable to the Chickasaw Nation because its enforcement would directly interfere with this treaty-protected right to exclude non-Indians from tribal lands.

CONCLUSION

The Choctaw and Chickasaw entered into the Treaty of Dancing Rabbit Creek and the Treaties of Washington of 1855 and 1866 with the United States based upon express assurances from the federal government in each that they would retain their sovereignty and tribal identities, and remain autonomous nations, free of the type of federal interference at issue in this case. Application of the NLRA to the Chickasaw Nation would result in the abrogation of treaty rights guaranteed to both the Choctaw and Chickasaw Nations and the Complaints in this matter should therefore be dismissed by the Board for lack of jurisdiction.

Respectfully submitted,

HARTZOG CONGER CASON & NEVILLE



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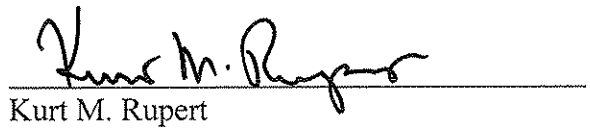
STATEMENT OF SERVICE

I hereby certify that I have this date served copies of the foregoing *Brief Amicus Curiae of the Choctaw Nation of Oklahoma in Support of the Respondent Chickasaw Nation* on all parties listed below pursuant to the National Labor Relations Board's Rules and Regulations 102.114(i) by electronically filing with the Office of the Executive Secretary of the National Labor Relations Board and by electronic mail to counsel for the Acting General Counsel, counsel for Respondent, counsel for the Charging Party Union, Respondent and Charging Party.

Dated this 13th day of November, 2012.



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