No. 23- _____

IN THE SUPREME COURT OF THE UNITED STATES

UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION, ET AL.,

Applicants,

v.

LYNN D. BECKER; JOHN P. JURRIUS,

Respondents.

From the Tenth Circuit United States Court of Appeals

EMERGENCY RULE 23 APPLICATION FOR STAY OF ENFORCEMENT OF MONEY JUDGMENT

On Application to the Honorable Neil M. Gorsuch
Associate Justice of the Supreme Court of the United States
and Circuit Justice for the Tenth Circuit

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To: Justice Neil M. Gorsuch, Associate Justice and Justice for the Tenth Circuit

The applicants and non-prevailing parties below, the Ute Indian Tribe of the Uintah and Ouray Reservation, *et al.* ("the Tribe"), ask that enforcement of the underlying judgment be stayed pending the disposition of this case in this court, on the condition that the Tribe maintains the security the Tribe posted with the district court following entry of the judgment below. As explained below, a stay of the appellate court mandate is essential to preserve the Court's jurisdiction because without a stay, the judgment will be satisfied and the case will be mooted. Absent a stay, the Court will be denied the opportunity to address critical, nationally significant legal issues relating to the power of a federal court to sanction parties for exercising their contractual and constitutional rights to resolve disputes through arbitration.

The questions to be presented in the Tribe's petition for certiorari are:

1. Whether this Court's holding in *Chambers v. NASCO, Inc.*, 501 U.S. 32, 50 (1991), grants a federal district court *carte blanche* authority to extend its reach beyond the walls of the federal judiciary and into the walls of a private arbitration and to sanction one of the parties to the arbitration for the singular act of "initiating the arbitration." Stated differently, whether this Court's holding in *Chambers* permits a federal district court to sanction a litigant based solely on a litigant's conduct in a separate arbitration action, when there was no evidence—nor any finding by the district court—that the litigant's initiation of the arbitration had any impact on the federal court proceeding in which the sanction was imposed.

2. Whether the Tribe was sanctioned improperly, without adequate due process protections and without any analysis or findings of fact to calibrate the sanction imposed to the harm, if any, allegedly caused by the sanctionable misconduct?

Without a stay, these issues will go unaddressed and erroneous rulings below will stand as precedent for similar actions in the future.

RULE 29.6 STATEMENT

The Ute Indian Tribe of the Uintah and Ouray Reservation ("Tribe") is a federally-recognized sovereign Indian tribe. The Tribe has no parent corporation or other parent entity, and no publicly held corporations owns 10% or more of its stock. Ute Energy Holdings LLC is a wholly owned tribal enterprise of the Tribe and no publicly held corporation owns 10% or more of its stock.

DECISIONS BELOW AND JURISDICTION

The Tribe seeks certiorari review of the federal court orders below sanctioning the Ute Tribe in the amount of $330,272.25, based solely on the Tribe's initiation of a separate arbitration action which had no impact on the federal district court proceedings. App. 11-38. The sanction judgment was entered on February 11, 2022, App. 56, and was timely appealed to the United States Court of Appeals for the Tenth Circuit. The district court granted a stay of enforcement pending the appeal. App. 57.

On August 8, 2023, a Tenth Circuit panel affirmed the sanction by a 2-to-1 vote, with Circuit Judge Eid dissenting. *Becker v. Ute Indian Tribe of the Uintah*

and Ouray Reservation, No. 22-4022, 2023 WL at * 11-12 (10th Cir. Aug. 8, 2023). App. 65.

The Tribe timely filed a petition for rehearing or rehearing *en banc* which was denied on October 27, 2023. And on November 7, 2023, the Tenth Circuit denied the Tribe's motion to stay enforcement of the mandate. App. 63.

The Tenth Circuit mandate issued on November 15, 2023. App. 64.

On December 6, 2023, the individuals in whose favor the sanction was imposed, plaintiff/counter-defendant Lynn Becker and movant John P. Jurrius, filed a motion in the district court asking the court to release the funds the Tribe had posted as security for the district court's stay pending appeal. App. 90. Without a stay of enforcement, the judgment funds will be released resulting in irreparable harm to the Tribe.

This Court has jurisdiction to review this case under 28 U.S.C. § 1254(1), and jurisdiction to stay the judgment under 28 U.S.C. § 2101(f) and 28 U.S.C. § 1651 (the All Writs Act).

STATEMENT OF THE CASE

The Ute Tribe is a federally recognized Indian tribe which resides on the Uintah and Ouray Reservation in Utah. The Tribe has nearly three thousand enrolled members and over half its members live on its reservation. The Tribe operates its own tribal government and oversees approximately 1.3 million acres of trust lands, some of which contain significant oil and gas deposits. Revenue from the development of these oil/gas resources is the primary source of money used to fund the Tribe's government and its health and social welfare programs for its members.

The Tribe's complaint alleges that Messrs. Becker and Jurrius are non-Indians who "insinuated themselves into the Tribe's government in the early 2000s and who, through a pattern of fraud, subterfuge and bullying, attempted to secure for themselves an interest in the Tribe's oil and gas mineral estate."[1] Both men had contracts with the Tribe that purported to grant the men interests in the Tribe's Indian trust mineral estate.[2] The Tribe subsequently sued both men on claims for fraud, constructive fraud, breach of fiduciary duty, and conversion of tribal assets. The Tribe settled its claims with Jurrius in a 2009 Settlement Agreement. The Tribe's claims against Becker remain pending at this time before the Ute Indian Tribal Court.

In its decisions issued in 2021 and 2022, the Tenth Circuit ordered Mr. Becker's federal court suit against the Tribe to be dismissed for the failure to exhaust tribal court remedies. *Becker v. Ute Indian Tribe of the Uintah and Ouray Reservation*, 11 F.4th 1140, 1150 (10th Cir. 2021). The Tenth Circuit also directed entry of a permanent injunction to enjoin Becker's state court lawsuit against the Tribe, the court ruling that Utah state courts lack subject matter jurisdiction over Mr. Becker's claims against the Tribe. *Ute Indian Tribe of the Uintah and Ouray Reservation v. Lawrence*, 22 F.4th 892, 910-11 (10th Cir. 2022). Thus, the Ute Tribe was the prevailing party in both of the underlying federal lawsuits.

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[1] Tribe's Second Amended Complaint, *Becker v. Ute Indian Tribe of the Uintah and Ouray Reservation*, No. 2:16-cv-00958 (D. Utah Sep. 24, 2016), ECF No. 34 at 10-11 ¶¶ 11-14.

[2] *Id.*

It was during the pendency of the above-referenced appeals that a three-judge panel of the Tenth Circuit abated the appeals in 2019 and remanded the cases to the district court "for the limited purpose of making supplemental factual findings" on three discrete questions pertaining to jurisdiction. App. 1-3. The remand order granted the district court discretion to "conduct an evidentiary hearing," but the order did not authorize the district court to make conclusions of law or to take any other action. *Id.*

The district court conducted a two-day evidentiary hearing on January 6-7, 2020, and 11 months later the court issued its findings of fact. App. 8. During the 11 month interim between the January 2020 evidentiary hearing and the district court's issuance of its findings of fact on December 2, 2020, the Ute Tribe commenced an arbitration action against Mr. Jurrius, as contractually authorized under the 2009 Settlement Agreement between the Tribe and Jurrius. When Mr. Becker learned of the arbitration in July 2020—seven months after the district court's evidentiary hearing—Becker served a subpoena duces tecum on Jurrius' attorneys, seeking production of information and materials related to the arbitration. The Tribe, in turn, moved to quash the subpoena, contending that issuance of the subpoena (*i*) exceeded the scope of the limited remand, and contending further that (*ii*) enforcement of the subpoena would "vitiate" the confidentiality terms of the 2009 Settlement Agreement between the Tribe and Jurrius, and would contravene federal policy favoring arbitration as a means for resolving disputes.[3]

[3] *See* ECF No. 206, U.S. District Court for the District of Utah, case number 2:16-cv-00958.

At a court hearing on August 31, 2020, the district court acknowledged that the court had "no jurisdiction" to rule on "violations of the 2009 Settlement Agreement" between the Tribe and Jurrius insofar as the Agreement committed those issues exclusively to arbitration. However, the district court said it did have authority to rule on "testimony in this case or the production of documents in this case." The district court ordered the Tribe to submit all of the Tribe's arbitration filings to the district court for *in camera* review. Then, four days later the district court *sua sponte* ordered the Tribe to show cause why (*i*) the Tribe's confidential 2009 Settlement Agreement with Jurrius and the arbitration submissions filed in connection with the arbitration should not be made public, and (*ii*) why the Tribe should not be sanctioned for its commencement of the arbitration action against Mr. Jurrius. App. 4-7.

The Tribal parties retained independent counsel for the sanction proceedings and responded to the show cause order.[4] Mr. Jurrius—a non-party to the lawsuit—requested and was allowed to participate in the sanction proceedings.

Before resolving the outstanding show cause order, the district court issued its findings of fact under the Tenth Circuit remand order on December 2, 2020. App. 8. Those findings contain no reference to either (*i*) the Tribe's subsequent initiation of an arbitration action against Mr. Jurrius (or any problems resulting from the subsequent arbitration), or (*ii*) any problems in the district court related to the

[4] *See* ECF No. 228, U.S. District Court for the District of Utah, case number 2:16-cv-00958.

production of documents or testimony from Mr. Jurrius at the January 6-7, 2020 evidentiary hearing.

On March 15, 2020—while the COVID shut-down was still in effect—the district court conducted a hearing, via Zoom, on the court's show cause order. The hearing took place a month before the final arbitration hearing was scheduled to take place in the Tribe's arbitration, a fact that was impressed upon the district court during the March 15th hearing.

Two weeks later, on March 31, 2021—without waiting for the AAA arbitration hearing—the district court issued a memorandum decision and order ("sanction order") which effectively preempted the arbitration. Although the AAA arbitrators had not yet ruled on the substantive merits of the Tribe's arbitration claims, and although the district court had previously acknowledged that it possessed "no jurisdiction" to rule on "violations of the [2009] Settlement Agreement between the Tribe and Jurrius, the district court proceeded to do precisely that, that is, to preemptively rule on the substantive merit of all seven of the Tribe's arbitration claims against Jurrius, the court finding each of the Tribe's arbitration claims to be "**MERITLESS**." (emphasis in original). Then, based on its resolution of the substantive merit of the Tribe's arbitration claims, the federal court concluded that the Tribe had acted in bad faith and should be sanctioned for its act of "initiating" the arbitration against Jurrius. App. 11-38. As a sanction, the court ordered the Tribe "to pay Becker and Jurrius the fees [the men had incurred] in prosecuting this matter." App. 36-38.

The very next day Mr. Jurrius presented the district court's sanction order to the AAA arbitrators and asked the arbitrators to dismiss the Tribe's arbitration. App. 39-40. Significantly, however, the AAA panel did not subsequently find any of the Tribe's seven arbitration claims to be meritless.[5] App. 41-44, and 45-52. While the AAA panel did not agree with the Tribe's interpretation of the various Settlement provisions that were in dispute, the AAA panel also did not find that the Tribe had lacked a good faith basis in law or in fact for any of the Tribe's seven arbitration claims.

REASONS FOR GRANTING THE STAY

The issues in this case are significant and of national importance because they touch upon fundamental questions of both separation of powers and the obligation of lower federal courts to abide by controlling Supreme Court precedent.

"Inconsistency is the antithesis of the rule of law." *LaShawn A. v. Barry*, 87 F.3d 1389, 1393 (D.C. Cir. 1996). The Tribe was penalized in this case for exercising its contractual and First Amendment right to seek redress, and for pursuing arbitral claims which the AAA arbitration panel—the only forum authorized to decide those claims—never found to be frivolous, or vexatious, or brought in bad faith. It is because of this glaring inconsistency—the antithesis of the rule of law—that the Tribe

[5] Parenthetically, the Tribe's contractual right of redress under the 2009 Settlement Agreement is expansive, allowing the Tribe to seek redress, through arbitration, for any "*controversy or* claim *arising out of or relating to* this [Settlement] Agreement, or to the interpretation, effectuation, enforcement, *or breach* thereof." (emphasis added). *See* ECF No. 261-4, p. 8, ¶ 28, U.S. District Court for the District of Utah, case number 2:16-cv-00958.

asks the Court to stay the mandate in order to permit the Tribe to seek certiorari review.

Without a stay, the district court will release the funds which the Tribe posted as security for its appeal, and the case will become moot. The Tribe will be denied a final review of the propriety of the sanction levied against it, and this Court will be denied the opportunity to clarify the limits, if any, that exist on a federal court's invocation of inherent sanction powers to encroach upon matters that the Congress has reserved exclusively for arbitration.

ARGUMENT

I. There is a Reasonable Probability that Certiorari will be Granted.

There is a reasonable probability that certiorari will be granted because the decisions below are clearly wrong as a matter of law, and the erroneous decisions also disregard both existing Supreme Court precedent and constitutional separation of powers.

A. The Judgments Below Are Clearly Wrong as a Matter of Law

The Federal Arbitration Act ("FAA") "declare[s] a national policy favoring arbitration." *Nitro-Lift Technologies, L.L.C. v. Howard*, 568 U.S. 17, 20 (2012) (quotation omitted). This means a federal court may not "rule on the potential merits of the underlying" claim that is assigned by contract to an arbitrator, "even if it appears to the court to be frivolous." *AT & T Technologies, Inc. v. Commc'n Workers*, 475 U.S. 643, 649-650 (1986). A court has "'no business weighing the merits of the grievance'" because the "'agreement is to submit all grievances to arbitration, not

merely those which the court will deem meritorious.'" *Id.* at 650 (quoting *Steelworkers v. Warrior & Gulf Navigation Co.*, 365 U.S. 574, 568 (1960)); *see also Viking River Cruises, Inc. v. Moriana*, 596 U.S. ___, 142 S. Ct. 1906, 1919 (2022) (an arbitration agreement constitutes "'a specialized kind of forum-selection clause that posits not only the situs of suit but also the procedure to be used in resolving the dispute.'") (quotation omitted).

Here, however, in direct contravention of the foregoing Supreme Court precedents, the decisions below not only improperly and preemptively adjudicated the substantive merits of the Tribe's arbitration claims, but the courts below then relied upon that improper adjudication as the sole basis for sanctioning the Tribe.

B. The Judgments Below Contravene Constitutional Separation of Powers

Because arbitration is a matter of contract and a private proceeding, until now no federal court has ever recognized "abuse of arbitration" or "bad faith arbitration." *See Int'l Medical Group, Inc. v. Am. Arbitration Ass'n*, 312 F.3d 833, 841-45 (3rd Cir. 2002). Indeed, this Court has emphasized that federal courts "are not at liberty to rewrite the [FAA] statute passed by Congress and signed by the President," in order to justify deviations from the Act's statutory text, or as a means of enlarging the judicial role in arbitration beyond what the Act provides. *Henry Schein, Inc. v. Archer and White Sales, Inc.*, 586 U.S. ___, 139 S. Ct. 524, 528 (2019) ("The Act does not contain a "wholly groundless" exception, and we are not at liberty to rewrite the statute" to insert a "wholly groundless" exception.).

Here, however, that is precisely what the decisions below did, the decisions below enlarge the judicial role in arbitration beyond what the FAA permits. The decisions permit federal courts to preemptively decide the substantive merits of a litigant's arbitration claims and to then sanction the litigant for seeking to resolve those claims in arbitration. Surely, this departure from the text of the FAA is just as glaring and just as impermissible as the departures that this Court has reversed in cases such as *Henry Schein, Inc.*, *Nitro-Lift*, and *AT & T*.

Under the FAA, federal courts have authority to determine (1) whether arbitration should be compelled, *see* 9 U.S.C. §§ 2-4, and (2) whether arbitration should be confirmed, vacated, or modified, *see* 9 U.S.C. §§ 9-11. However, beyond these narrowly defined procedural powers, federal courts have no authority to interfere with an arbitration proceeding. *E.g., AT & T*, 475 U.S. at 649-650.

Certainly, nothing in the FAA permits what happened here, that is, for a federal court to sanction a litigant based solely on the litigant's conduct in arbitrating a dispute within the bounds of the litigant's arbitration agreement.

For this reason, under analogous facts, federal appellate courts in other circuits have refused to uphold inherent authority sanctions in circumstances such as those here. The Fifth Circuit refused to do so in *Positive Software Solutions, Inc. v. New Century Mortg. Corp.*, 619 F.3d 458, 462 (5th Cir. 2010). Like the case at bar, the litigants in *Positive Software* had contractually agreed to arbitrate disputes. However, the federal district court subsequently invoked its inherent authority to sanction New Century's attorneys for discovery violations that allegedly occurred

during the arbitration. *Id.* at 460. The Fifth Circuit, however, reversed the sanctions, holding that a court's inherent sanction authority does not extend to collateral proceedings that "do not threaten the court's own judicial authority or proceedings." *Id.* at 460-61. The court added that:

> [T]he sanctions order threatens unduly to inflate the judiciary's role in arbitration. The FAA provides for minimal judicial involvement in resolving an arbitrable dispute; the court is limited to only a few narrowly defined, largely procedural tasks. But by using its power to sanction, a court could seize control over substantive aspects of arbitration. The court would, in effect, become a roving commission to supervise a private method of dispute resolution and exert authority that is reserved by statute, caselaw, and longstanding practice, to the arbitrator. That supervision is inconsistent with the scope of [a court's] inherent [sanction] authority and with federal arbitration policy, which aims to prevent courts from delaying the resolution of disputes through alternative means.

619 F.3d at 462. This concern applies with equal force here.

C. The Judgments Below Disregard Other Supreme Court Precedents

To that same extent the decisions below also contravene this Court's decision in *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991), and precedent in other circuits that require a nexus between a litigant's alleged bad-faith conduct and harm or threatened harm to the federal court proceeding. *See, e.g., FDIC v. Maxxam, Inc.*, 523 F.3d 566, 593 (5th Cir. 2008) (a court's inherent power does not extend to collateral proceedings that "do not threaten the court's own judicial authority or proceedings."); *United States v. Moussaoui*, 483 F.3d 220 (4th Cir. 2007) (holding courts lack inherent authority to issue orders relating to processes taking place in other forums); *Atchison,*

Topeka & Santa Fe Ry. v. Hercules Inc., 146 F.3d 1071, 1074 (9th Cir. 1998) (reversing sanction imposed for a litigant's action in instituting litigation in another forum).

Although *Chambers* affirmed a sanction based in part on a litigant's out-of-court conduct (including the initiation of a separate arbitration), the *Chambers* court emphasized that "the District Court made clear that it was policing abuse of its own process." *Chambers*, 601 U.S. at 55. That abuse included fraud "perpetrated on the court" and the respondent's bad faith "displayed toward both his adversary and the court *throughout the course of the litigation*." *Id.* at n.17 (emphasis added). Here, in sharp contrast to *Chambers*, there was no (*i*) prelitigation bad faith conduct on the part of the Ute Tribe, (*ii*) no bad faith conduct during the remand hearing itself, and (*iii*) no bad faith conduct by the Tribe during the entire seven years of judicial proceedings that had *preceded* the 2020 remand hearing. More importantly, here there was no evidence—nor any finding by the district court—that the Tribe's commencement of the post-hearing arbitration action had affected to any extent the (*i*) production of documents, or (*ii*) testimony to the court in the remand hearing, (*iii*) or caused any harm, injury, or loss to Messrs. Becker or Jurrius during the remand proceeding itself.

The decisions below also conflict with Supreme Court and other federal circuit precedent requiring courts to determine whether the sanction imposed is civil (and remedial) or criminal (and punitive), and to then provide appropriate, and different, levels of due process protections. *Int'l Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821 (1994); *see also F. J. Hanshaw Enterprises, Inc. v. Emerald*

River Dev., Inc., 244 F.3d 1128, 1137-39 (9th Cir. 2001) ("The more punitive the nature of the sanction, the greater the protection to which an individual is entitled."); *Mackler Productions, Inc. v. Cohen*, 146 F.3d 126, 130 (2nd Cir. 1998) (reversing punitive sanctions because they were substantial enough to warrant criminal due process protections).

"An unconditional penalty is criminal in nature because it is 'solely and exclusively punitive in character.'" *Hicks v. Feiock*, 485 U.S. 624, 633 (1988) (quoting *Penfield Co. v. SEC,* 330 U. S. 585, 330 U. S. 593 (1947)).

Here, the sanction is criminal in nature because the district court identified the sanctionable misconduct as the Tribe's singular act of *initiating* the arbitration. App. 34-36. This means the alleged misconduct had already happened and so the character and purpose of the sanction was "*exclusively punitive*"—the court's sole objective was to punish the Tribe, not to coerce it. *Id.*

The Court's precedents also requires federal courts to "calibrate" the amount of the sanction to "damages caused by" the bad-faith acts on which the sanctions are based. *Goodyear Tire & Rubber Co. v. Haeger*, 137 S. Ct. 1178, 1186 (2017) (quoting *Mine Workers v. Bagwell*, 512 U.S. at 834)).

Here, however, the decisions below largely dispensed with the analytical framework required by *Goodyear* and *Bagwell* and simply granted Messrs. Becker and Jurrius the full amount of attorney fees each man sought with no judicial resolution of conflicting evidence on the reasonableness of the fees.

II. There is a Fair Prospect that the Court will Reverse.

The Court is likely to reverse the decisions below because there was no factual or legal basis for the district court to sanction the Tribe under its inherent authority. Procedurally, the case was before the district court on a limited remand from the Tenth Circuit. The Tribe did not initiate its arbitration action against Mr. Jurrius until weeks after the January 6-7, 2020 remand hearing had concluded. And there is no evidence, nor any finding of fact, that the Tribe's post-hearing initiation of the arbitration interfered in any way with Mr. Jurrius' production of documents or his testimony at the January 2020 remand hearing. Nor is this a case in which Tribe had disobeyed the district court or taken any action in defiance of the court. Instead, this is a case in which the district court impermissibly adjudicated the substantive merits of the Tribe's arbitration claims and did so preemptively, and then, on the basis of that impermissible preemptive adjudication, the court sanctioned the Tribe solely for the Tribe's act of "initiating" the arbitration. In doing so, the district court exceeded the scope of a federal court's judicial role in arbitration under the FAA, and contravened this Court's precedent prohibiting federal courts from adjudicating the substantive merits of a litigant's arbitration claims. *AT & T*, 475 U.S. at 649-650; *Steelworkers*, 365 U.S. at 568.

With respect to the propriety of the sanctions, the Tribe is likely to succeed because the Tribe was not afforded adequate due process protections and there is no causal link between the Tribe's alleged misconduct and the legal fees paid by Messrs. Becker and Jurrius as required by *Goodyear*, 137 S. Ct. at 1186.

III. Absent a Stay, the Petitioners will Suffer Irreparable Harm.

The facts of this case raise legitimate questions over the propriety of the sanction imposed against the Ute Tribe and the power of a federal court to sanction parties for exercising their contractual and constitutional rights to resolve disputes through arbitration. But unless this Court issues a stay pending certiorari review, the district court will release the Tribe's litigation reserve fund and that money will be paid out to the Appellees. The Tribe's certiorari petition will become moot, and the Tribe and its members will suffer irreparable harm. As emphasized *supra* at 3, the Tribe operates its own tribal government and provides law enforcement and other health and welfare services to its membership of nearly three-thousand members. The sanction penalty of $330,272.25 is money that would otherwise be used to meet the Tribe's ongoing governmental operating expenses. The Tribe should not be forced to pay the sanction until this Court has considered and ruled upon the Tribe's planned petition for certiorari review.

IV. The Equities Favor Granting a Stay.

Good cause for issuance of a stay is established based on the "equities in the case." Knibb, *Federal Court of Appeals Manual* § 34:13, at 924 (6th ed. 2013). The equities here support maintaining the status quo for the short time necessary for this Court to decide the Tribe's certiorari petition.

The limited purpose of a stay pending appeal "is merely to preserve" the status quo. *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981). The status quo here will be maintained by staying the mandate, and Appellees will not be prejudiced. The

Tribe has established and posted a litigation reserved fund to secure the Appellees' judgment in the event the Tribe's appeal—and now its certiorari petition—are unsuccessful. A copy of the district court's order of May 4, 2022, staying the judgment is included in the appendix. App. 57-62. The Tribe hereby certifies that the litigation reserve will remain in place pending the Supreme Court's resolution of the Tribe's petition. Conversely, there is no harm to the public interest in staying the issuance of the mandate. *See, e.g., Winnebago Tribe of Nebraska v. Stovall,* 205 F. Supp. 2d at 1223 ("the public has a significant interest in assuring the viability of tribal self-government, self-sufficiency, and self-determination").

CONCLUSION

Based on the facts and authorities cited herein, the Tribe respectfully requests that the Court grant a stay pending the disposition of this case in this Court.

Respectfully submitted,

/s/ Frances C. Bassett

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Dated: December 20, 2023.

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FILED
United States Court of Appeals
Tenth Circuit

July 19, 2019

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION, a federally recognized Indian Tribe and a federally chartered corporation; UINTAH AND OURAY TRIBAL BUSINESS COMMITTEE; UTE ENERGY HOLDINGS, a Delaware LLC,

Plaintiffs - Appellants,

v.

BARRY G. LAWRENCE, District Judge, Utah Third Judicial District Court, in his individual and official capacities; LYNN D. BECKER,

Defendants - Appellees.

Nos. 18-4013, 18-4030 & 18-4072

ORDER

Before **BRISCOE**, **MORITZ**, and **EID**, Circuit Judges.

After careful review, the panel has determined that the appendices filed by the parties, as well as the district court pleadings available on CM/ECF, are inadequate to allow the panel to resolve these three pending appeals. The panel has in turn determined that the proper course is to remand the case to the district court for the

limited purpose of making supplemental factual findings and in turn certifying those findings to this court as a supplemental record.

The district court is directed, on remand, to make factual findings regarding the following questions:

1) Where was the Independent Contractor Agreement (the Agreement) between the Ute Indian Tribe of the Uintah and Ouray Reservation (the Tribe) and Lynn D. Becker (Becker) executed?

2) Did the parties anticipate, at the time the Agreement was executed, that the Tribe and/or Becker would perform their respective contractual duties under the Agreement outside of Tribal lands including, in particular, non-Tribal lands in the State of Utah?

3) Where did the Tribe and Becker perform their respective contractual duties under the Agreement and, in particular, did the performance of those duties occur on non-Tribal lands in the State of Utah?

The district court may, in its discretion, conduct an evidentiary hearing to aid the court in making its supplemental factual findings.

Accordingly, these cases are remanded to the district court for the limited purpose of making supplemental factual findings. This court will retain jurisdiction of the appeals pending the district court's completion of its supplemental factual findings, and those supplemental factual findings shall be certified to this court as a supplemental record. In the interim, these appeals are abated.

Within 30 days of the date of this order, and every 30 days thereafter until the conclusion of the proceedings on limited remand, Appellants shall file a status report to advise this court of the status of the proceedings on limited remand.

Entered for the Court,

ELISABETH A. SHUMAKER, Clerk

by: Chris Wolpert
Chief Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

LYNN D. BECKER, **Plaintiff,** **v.** **UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION, et al.,** **Defendants.**	**ORDER TO SHOW CAUSE** **Case Nos. 2:16-cv-579** **2:16-cv-958** **Judge Clark Waddoups**

The parties in this matter came before the court on August 31, 2020, for a hearing (the "Hearing") on the Tribe's Motion to Quash (ECF No. 206) (the "Motion"). The Tribe asks the court to quash a third-party subpoena duces tecum (the "Subpoena") that Mr. Becker served on Snow Christensen & Martineau. The Subpoena seeks information and documents regarding Mr. Becker and documents related to or arising out of a pending arbitration between the Tribe and John Jurrius (the "Arbitration"). The Tribe argues that the Subpoena should be quashed because it exceeds the scope of this court's authority under the Tenth Circuit's remand in this matter and because the information it seeks is confidential and unrelated to matters before this court on remand. In response, Mr. Becker argues that the Arbitration was initiated in retaliation for Mr. Jurrius testifying at the January 7, 2020 evidentiary hearing in this matter, that it is intended to intimidate and influence Mr. Jurrius from testifying in future proceedings in this matter, and that the information requested in the Subpoena is necessary to establish that the Tribe is abusing the judicial process. *See e.g., Equal Employment Opportunity Comm'n v. Locals 14 & 15,*

Int'l Union of Operating Engineers, 438 F. Supp. 876, 879 (S.D.N.Y. 1977). Mr. Jurrius has echoed Mr. Becker's allegation that the Arbitration is retaliatory and has requested that the court enter a protective order addressing the Tribe's actions (ECF No. 214). (*See* ECF No. 217 at 12:6–18).

At the Hearing, after it heard from The Tribe, Mr. Becker, and counsel for Mr. Jurrius, the court concluded that it lacked sufficient information to be able to rule on the Tribe's Motion, determining that it cannot resolve whether the Subpoena is relevant to the conduct in this case without knowing what the claims in the Arbitration are. (ECF No. 217 at 12:19–13:16). The Tribe thus agreed to provide to the court, for its *in camera* review, documents that detailed the claims upon which the Arbitration is centered. The court reserved ruling on the Tribe's Motion, as well as a Motion for Protective Order filed by Mr. Jurrius (ECF No. 214), until it was able to conduct its *in camera* review and determine how this matter should proceed. The Tribe subsequently sent to the court, via email, documents to allow it to perform that *in camera* review.[1] The court has conducted its *in camera* review of the documents submitted by the Tribe and **HEREBY ENTERS** the following **ORDERS TO SHOW CAUSE**:

1. After reviewing the documents that the Tribe sent to the court via email, the court finds that they do not meet the requirements of the court's Local Rules to be filed under seal and therefore believes that they should be made available to the public. *See* DUCivR 5-3. The Tribe is **HEREBY ORDERED TO, WITHIN FOURTEEN (14) DAYS OF THE ENTRY OF THIS ORDER,**

[1] Mr. Jurrius also sent to the court, via email, a document relevant to the Arbitration. The Tribe has filed an objection to Mr. Jurrius's submission. (ECF No. 219). Because the court did not rely on Mr. Jurrius's submission in crafting this order, it need not resolve this objection at this time.

SHOW CAUSE why the three documents it sent to the court via email should not be filed on the docket in this case and made accessible to all parties and the public. Mr. Becker and Mr. Jurrius shall thereafter have **FOURTEEN (14) DAYS** to respond to the Tribe's filing. Mr. Becker and Mr. Jurrius may submit any additional documentation and evidence they may believe would be relevant for the court to consider in addressing this Order to Show Cause.

2. After reviewing the documents that the Tribe sent to the court via email, the court believes that they raise a serious question in support of Mr. Becker's allegation that the tribe initiated the Arbitration against Mr. Jurrius in retaliation for him complying with a subpoena issued in this matter and/or testifying at the January 7, 2020 evidentiary hearing and in order to intimidate and deter him, and others, from offering future testimony that may be required to resolve this case. It views such efforts "very dimly." (ECF No. 217 at 10:6–16). As such, the Tribe is **HEREBY ORDERED TO, WITHIN FOURTEEN (14) DAYS OF THE ENTRY OF THIS ORDER, SHOW CAUSE** why sanctions should not be entered against it for abusing the judicial process and/or acting in bad-faith. Mr. Becker shall thereafter have **FOURTEEN (14) DAYS** to respond to the Tribe's filing and is instructed to, in his response, present to the court what he believes an appropriate sanction against the Tribe should be.

After the court receives all briefing ordered herein, it shall review the same and notify the parties how it intends to proceed in this matter, including scheduling a hearing to address the issue of how the court should proceed on the Order to Show Cause and resolve the pending motions.

DATED this 4th day of September, 2020.

BY THE COURT:

Clark Waddoups
United States District Judge

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

LYNN D. BECKER, **Plaintiff,** **v.** **UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION, et al.,** **Defendants.**	**FINDINGS OF FACT** **Case Nos. 2:16-cv-579** **2:16-cv-958** **Judge Clark Waddoups**

For over seven years, Lynn Becker ("Becker") and the Tribe[1] have been extensively litigating in an attempt to determine which sovereign has jurisdiction over the underlying dispute—the United States, the state of Utah, or the Tribe. By order entered on April 30, 2018 this court determined that the state of Utah had subject matter jurisdiction over the parties' claims. (*See* ECF No. 136 at 9–26).[2] Through a trifecta of appeals (*see* Nos. 18-4013, 18-4030, 18-4072), the parties' dispute came before the Tenth Circuit, and by Order entered on July 19, 2019, that court determined that the materials before it were inadequate to allow it to resolve the appeals. (*See* ECF No. 145). The Tenth Circuit therefore remanded this matter to this court "for the limited purpose of making supplemental factual findings" regarding three questions:

[1] For purposes of this order, the "Tribe" collectively refers to the Ute Indian Tribe of the Uintah and Ouray Reservation together with the affiliated parties the Uintah and Ouray Tribal Business Committee (the "Business Committee") and Ute Energy Holdings, LLC ("Ute Energy"). To the extent that the court references an action taken by one of these parties independently of the others, it will refer to that party individually by name.

[2] Unless specifically identified otherwise, the ECF Numbers referenced herein refer to the docket in Case No. 2:16-cv-579.

1. Where was the Independent Contractor Agreement (the Agreement) between the Ute Indian Tribe of the Uintah and Ouray Reservation (the Tribe) and Lynn D. Becker (Becker) executed?
2. Did the parties anticipate, at the time the Agreement was executed, that the Tribe and/or Becker would perform their respective contractual duties under the Agreement outside of Tribal lands including, in particular, non-Tribal lands in the State of Utah?
3. Where did the Tribe and Becker perform their respective contractual duties under the Agreement and, in particular, did the performance of those duties occur on non-Tribal lands in the State of Utah?

In an attempt to gather evidence to answer these questions, this court held an evidentiary hearing on January 6 and 7, 2020 (the "Evidentiary Hearing"), at which it heard testimony from fifteen witnesses and received over 140 exhibits. Following the Evidentiary Hearing, the parties submitted substantial proposed findings of fact of twenty-two and thirty-six pages, respectively. (ECF Nos. 179 & 180). The Tribe has also submitted three requests for judicial notice (ECF Nos. 164, 173, & 180) in which it asks the court to take notice of at least twenty statements, documents, filings, laws, and/or articles.[3] All of this is to demonstrate that while the Tenth Circuit's three questions may appear simple, their answers are anything but. Indeed, the answers to these questions require significant background and context, which the court attempts to set forth herein.

[3] Unless expressly discussed herein, the court **ACCEPTS** the Tribe's submitted materials, takes judicial notice of the same, and has considered the same in makings its below-discussed credibility determinations and findings of fact.

CONCLUSION

As more fully discussed herein, the court finds that:

1. The record before the court is inconclusive as to where the Agreement was executed. While the court finds that the Tribe executed the Agreement at its headquarters on Tribal Land, it is unclear where Becker executed it. It is possible that he did so at either: 1) Tribal Headquarters, 2) Roosevelt, Utah, or 3) Salt Lake City, Utah.

2. At the time the Agreement was executed, the Tribe and Becker both anticipated that the Becker would be required to work off of Tribal Lands, in both Utah and out of state, in order to fulfill his contractual duties.

4. Becker performed his respective contractual duties under the Agreement both on and off of Tribal Lands. At least half of the work that Becker performed was done off of Tribal Lands.

5. The record before the court is inconclusive as to where the Tribe performed its respective contractual duties under the Agreement.

DATED this 2nd day of December, 2020.

BY THE COURT:

Clark Waddoups
United States District Judge

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

LYNN D. BECKER, **Plaintiff,** **v.** **UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION, et al.,** **Defendants.**	**MEMORANDUM DECISION AND ORDER** **Case Nos. 2:16-cv-579** **2:16-cv-958** **Judge Clark Waddoups**

On August 13, 2020, Lynn Becker ("Becker") filed a Notice of Intent to Serve Subpoena upon Snow Christensen & Martuneau, who was serving as counsel for John Jurrius ("Jurrius"). (*See* ECF No. 205).[1] Among other things, that subpoena sought documents related to or arising out of a pending arbitration between Jurrius and the Tribe[2] (the "Arbitration"). (*See* ECF No. 205-1). The Tribe moved to quash the subpoena (ECF No. 206), and the court held a hearing on the Tribe's motion on August 31, 2020. Following that hearing, and in response to the issues raised thereat, the court entered an Order to Show Cause (ECF No. 221) on September 4, 2020 (the "Order to Show Cause") that directed to Tribe to show cause why: 1) documents that it had sent to the Court *in camera* should not be filed on the docket and made accessible to all parties and the public

[1] Unless specifically stated otherwise, the ECF Numbers contained herein refer to documents filed in Case No. 2:16-cv-958.

[2] For purposes of this order, the "Tribe" collectively refers to the Ute Indian Tribe of the Uintah and Ouray Reservation together with the affiliated parties the Uintah and Ouray Tribal Business Committee (the "Business Committee") and Ute Energy Holdings, LLC ("Ute Energy"). To the extent that the court references an action taken by one of these parties independently of the others, it will refer to that party individually by name.

and 2) it should not be sanctioned for abusing the judicial process and/or acting in bad faith for initiating the Arbitration against Jurrius as retaliation for him testifying at the January 7, 2020 evidentiary hearing in this matter (the "Evidentiary Hearing") or as a means to intimidate and influence him from testifying in future proceedings in this matter. (*See* ECF No. 221). All parties have responded to the Order to Show Cause, and the court held a hearing on the same on March 15, 2021.

FACTS

1. On or about May 18, 2009, the Tribe and Jurrius entered into a Settlement Agreement (the "Settlement Agreement") to resolve a lawsuit in the District of Colorado. (ECF No. 228-4). The Settlement Agreement contained the following provisions:

a. "[e]xcept for information in the public domain, all records of the Tribe and all information generated or accumulated by [Jurrius] in connection with [his] provision of services to the Tribe remaining in [his] possession, custody or control shall be treated as Confidential, and [Jurrius] shall not use such information or disclose such information to other persons or entities without the prior approval of the [Tribe's] Business Committee or its designee" (ECF No. 228-4 at ¶ 4(d));

b. "If [Jurrius] becomes subject to any legal obligation to disclose such confidential information or reasonably needs to disclose such information in a lawsuit to which [Jurrius] is a party, [Jurrius] shall, if lawfully permitted to do so and before making any disclosure, promptly notify the [Tribe] of the fact and the Parties shall promptly discuss in good faith ways in which [Jurrius] can reasonably make disclosures and comply with the obligations of confidentiality in this subpart, and if the Paities are unable to reach a

timely agreement on this issue, the [Tribe] shall have the right to seek an injunction *in camera* or otherwise restraining such disclosure" (*id*.);

c. "For a period of 25 years, [Jurrius] will not conduct business of any kind on Tribal Territory with the Tribe or with any Tribally-related entities or enterprises, or with Ute Tribe allottees. . . . [Jurrius] shall not be considered to 'conduct business' for purposes of this subpart where [he] neither (i) hold[s] an ownership interest of more than five percent in an entity that engages in such a business nor (ii) participate in any aspect of the business pertaining to the [Tribe]" (*id*. at ¶ 4(f));

d. "[Jurrius] will not use the Tribe as a reference when soliciting new or continued business with other Tribes or any other entity" (*id*. at ¶ 4(g));

e. Jurrius "will not for any purpose enter within the Ute Indian Tribal Territory . . . without the express prior permission of the [Tribe] [but] may travel on-public highways that pass through such Tribal Territory for purposes of travel to a location other than within the Tribal Territory" (*id*. at ¶ 4(i));

f. "Any controversy or claim arising out of or relating to [the Settlement Agreement], or to the interpretation, effectuation. enforcement, or breach thereof, shall be determined by arbitration administered by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration Rules" and that such arbitration "shall take place in Denver, Colorado." (*id*. at ¶ 24).

2. On October 22, 2019, Becker served the Tribe with a Notice of Intent to Serve Subpoena on Jurrius (the "Production Subpoena") that commanded Jurrius to produce documents and information that related to the three questions that the Tenth Circuit remanded this action to this court to answer. (*See* ECF No. 178).

3. On November 1, 2019, The Tribe moved to quash the Production Subpoena on the basis that information it sought is "protected from disclosure by the attorney-client privilege and the attorney work product privilege." (*See* ECF No. 179).

4. On that same date, the Tribe's counsel sent Jurrius a letter notifying him that the Tribe objected to the Production Subpoena "to the extent that [it] seeks documents that are protected from disclosure under the attorney-client privilege, the attorney work product doctrine, and/or any other applicable doctrine, immunity or limitation on discovery" and instructing him "not to produce any such privileged or protected documents in response to the subpoena without first obtaining the Tribe's approval . . . ." (*See* ECF No. 228-5 at p. 5).

5. On November 15, 2019, Becker and the Tribe resolved the dispute over the Production Subpoena and entered a stipulation that governed how the requested information would be provided (the "Production Stipulation"). The Production Stipulation provided, in relevant part, that all parties should treat the received documents "as 'attorney eyes only'" and if the Tribe concluded any were privileged or confidential, it would continue to designate the same "as 'attorney eyes only' until and unless the Court determines that the document is not privileged or confidential," but that "[a]ny document produced by Mr. Jurrius as to which the Tribe does not assert a claim of privilege or confidentiality within one week of production may be shared in the normal course with Mr. Becker and Judge Lawrence." (*See* ECF No. 180).

6. Jurrius was not involved in negotiating the Production Stipulation, was not a party to it, and had no communication with the Tribe as to the production ordered by it.

7. On December 4, 2019, Becker's counsel forwarded Jurrius a copy of the Production Stipulation and an explanation of his "understanding of the process [Jurrius] should follow, based upon the stipulation and the Court's order.[3]" (ECF No. 236-3).

8. Thereafter, and pursuant to the manner set forth in the Production Stipulation, Jurrius produced 309 pages of documents in response to the Production Subpoena (the "Jurius Production"). The Tribe does not assert that the agreed upon procedure was not followed.

9. The Jurrius Production contained twenty-eight documents comprised of:

a. Photographs taken of a public event; (*see* ECF No. 239-1 at 11)

b. Four Tribal ordinances; (*see id*.)

c. Five minutes from Business Committee Meetings; (*see id*.)

d. Ten Tribal resolutions; (*see id*.)

e. Correspondence from the Department of Interior, Bureau of Indian Affairs; (*see id*.)

f. A section of a Federal law; (*see id*.)

g. A Fax cover page regarding the recording of documents among public land records; (*see id*.)

h. Two photographs of bulletins posted in a public newspaper; (*see id*.)

i. Three documents relating to Ute Energy LLC—its Amended and Restated Operating Agreement, an outline of a joint venture, and a financing proposal (*see id*.) (the "Ute Energy Documents").

[3] The court believes that the referenced order is the November 20, 2019 docket text order which found that the Tribe's motion to quash was moot "based on the stipulation of the parties at ECF No. 180." (*See* ECF No. 181).

j. Three of these documents, being the photographs taken of a public event and two of the ordinances, were admitted by Becker and/or the Tribe as exhibits at the Evidentiary Hearing. (*See* ECF No. 214 at ¶ 12; ECF No. 239-1 at p. 11).

10. On December 10, 2019, the Tribe's counsel sent Jurrius a letter stating, among other things, that he had violated the Settlement Agreement by producing the Jurrius Production. (*See* ECF No. 228-5 at pp. 6–8).

11. On January 7, 2020, Becker called Jurrius as a witness and compelled him to testify at the Evidentiary Hearing.

12. Jurrius did not communicate with the Tribe before he testified at the Evidentiary Hearing.

13. Before taking the stand, Jurrius's counsel made a statement to the court expressing Jurrius's concern that his compelled testimony could be seen as a violation of privilege, confidentiality, and/or the Settlement Agreement. (*See* ECF No. 249 at 277:17–280:4).

14. The court responded to this concern by recognizing that there has been "an excessive claim of privilege" in this action, reminding the parties that "[i]f there is a privilege that would entitle a party to have the testimony not disclosed, the burden falls on the party who has that privilege," and stating that the Tribe's counsel is "more than capable of asserting those privileges" and that it would hear counsel on any instance where they "assert the privilege." (*See id*. at 280:5–281:7).

15. During Jurrius's testimony, the Tribe raised four objections as to the information he was providing being privileged or confidential. Each was overruled. (*See id*. at 288:8–22; 293:6–295:9l; 296:4–6; 362:2–363:25).

16. Thereafter, on January 15, 2020, the Tribe informed Jurrius that he had violated the Settlement Agreement by, among other things, producing the Jurius Production, as he disclosed the same "without prior approval of the Tribe's Business Committee" and "willfully ignored the Settlement Agreement's procedure for disclosing information gained in connection with your services to the Tribe if you were to become subject to a legal obligation to do so." (ECF No. 228-5 at pp. 2–4).

17. The Tribe thereafter initiated the Arbitration against Jurrius on January 27, 2020, for his alleged breaches of the Settlement Agreement. As outlined in its Corrected Statement of Claims (the "Statement of Claims"),[4] the Tribe asserts in the Arbitration that Jurrius violated the Settlement Agreement:

a. in both "substance and process . . . by producing over 300 internal Tribal documents without noticing or obtaining prior approval from the Tribe" (Statement of Claims at ¶ 31).

i. In Support of this claim, the Tribe alleges that Jurrius "unilaterally produced more than 300 pages of internal tribal documents, materials, and information in flagrant violation of the Settlement Agreement" (*id*. at ¶ 22).

ii. The Tribe further alleges that by letter dated November 1, 2019, the Tribe notified Jurrius that it objected to the Production Subpoena and "notified Jurrius of his obligations under the Settlement Agreement, to avoid disclosure of documents obtained in the course of his employment with the Tribe which could be

[4] The court has not been provided with a copy of the Tribe's original statement of claims, but it does not appear, based on the pleadings of the parties, that any differences between the original and the "corrected" Statement of Claims are material.

considered privileged or confidential without first obtaining the Tribe's prior approval" but that Jurrius "failed to respond to [the] communication." (*id*. at ¶¶ 21–22).

b. in both "substance and process . . . by providing oral testimony discussing the existence and contents of the Settlement Agreement and providing confidential information regarding [the Tribe] and his employment with [the Tribe] without noticing or obtaining prior approval" (*id*. at ¶ 33);

i. In Support of this claim, the Tribe alleges that Jurrius "violated the terms of Section 4(d) of the Settlement Agreement by providing oral testimony at [the Evidentiary Hearing]." (*Id*. at ¶ 24).

ii. The Tribe also alleges that the transcripts from the Evidentiary Hearing "show that despite having the intent to testify in the [Evidentiary Hearing] . . . Jurrius at no time acted to notify the Tribe of these communications or to otherwise fulfill his legal obligations to the Tribe under the Settlement Agreement." (*Id*. at ¶ 27).

iii. The Tribe also alleges that Jurrius's testimony at the Evidentiary Hearing "included extensive details obtained in connection with his employment with the Tribe, including information regarding his employment with the Ute Tribe, the Tribe's economic and business development strategies, development of Tribal ordinances and financial investment strategies, the interests of the Tribe's governing body and membership, and the Tribe's actions and understanding as to the contractual relationships with third parties." (*Id*. at ¶ 28).

c. by continuingly using the Tribe's "name and work history in the solicitation of continued or new business," despite "being placed on notice by the Tribe

over four (4) months ago in written correspondence" that he was violating the Settlement Agreement (*id*. at ¶ 35);

i. In Support of this claim, the Tribe references a June 6, 2017 letter that it sent to Jurrius in which it demanded that Jurrius and his "affiliated entities cease and desist from invoking the [Tribe] on your websites and in your promotional materials." (*Id*. at ¶ 19; *see also* ECF No. 239-1 at 54–55).

ii. The June 6, 2017 letter further stated that this activity constituted a breach of the Settlement Agreement, which "prohibits you from using the Tribe as a reference when soliciting 'new or continued business with other Tribes or any other entity.'" (*Id*. at ¶ 19; *see also* ECF No. 239-1 at 54–55).

iii. In further support of this claim, the Tribe alleges that "[o]n or around January 13, 2020, the Tribe became aware of Jurrius' ongoing violation of Section 4(g) of the Settlement Agreement by listing the [Tribe] as a reference on his professional LinkedIn page for his past work as President & CEO of Jurrius Group and as the owner of Native American Resource Partners LLC," further alleging that such references "include a document that provides extensive details on Jurrius' work for the [T]ribe, including an extensive list of third parties with whom the Tribe has business ties and financial information related to Tribal entities and critical infrastructure on the Tribe's Reservation." (*Id*. at ¶ 19).

d. by "conducting business on 'Tribal Territory' as defined by the Settlement Agreement" (*id*. at ¶ 37); and

i. In Support of this claim, the Tribe references a June 6, 2017 letter that it sent to Jurrius in which it indicated that Jurrius violated the Settlement

Agreement because Indigena Capital, a company that it alleges Jurrius was affiliated with, solicitated the Tribe's "participation in a petroleum pipeline project that apparently is planned to cross portions of the [Tribe's] Reservation." (*Id*. at ¶ 19; *see also* ECF No. 239-1 at 54–55).

e. by "entering 'Tribal Territory' as defined by the Settlement Agreement for purposes other than passing through to travel to a location other than within 'Tribal Territory'" (*id*. at ¶ 38).

i. The Tribe does not support this claim in the Statement of Claims.

18. After the court entered the Order to Show Cause, the Tribe filed a Second Corrected Statement of Claims in Arbitration (the "Amended Statement of Claims"). (ECF No. 228-3). This filing was intended "to eliminate language that may have given the Court pause." (*See* ECF No. 228 at 6–7). Essentially, the amendments refined the language of the claims it was asserting against Jurrius to clarify that the Tribe was only objecting to the *procedure* by which Jurrius produced the Jurrius Production and offered testimony at the Evidentiary, namely his failure to notify and confer with the Tribe before taking those actions. (*See* ECF No. 228-3). These changes are most materially reflected in the Tribe's first and second causes of action, which have been amended to remove allegations that these actions violated "the *substance*" of the Settlement Agreement. (*Compare* Statement of Claims at ¶¶ 31, 33 *with* ECF No. 228-3 at ¶¶ 28, 30).

19. The Amended Statement of Claim also expands upon, or modifies, the references in the Statement of Claims regarding communications between the Tribe and Jurrius. It also makes minor changes to the Tribe's claims, including its recognition that

although Jurrius "and/or his affiliated entities have made some revisions to their websites' references to the Tribe since the Tribe initiated this [A]rbitration, [they] have failed to remove references and information related to the Tribe from internet websites." (*See* ECF No. 228-3 at ¶¶ 17, 33).

20. As of January 8, 2020, Jurrius's LinkedIn profile stated, in relevant part, that as "Owner, President & CEO" of Jurrius Group, he "served as Financial Advisor for [the Tribe] [and] established and implemented [its] 'financial plans' and founded, formed and financed the majority of [its] energy enterprises." (*See* ECF No. 239-1 at p. 57). The page also had attached to it a resume that stated that Jurrius worked for the Tribe and outlined some of the work he completed during his employment, including, among other things, that he formed Ute Energy, founded major projects, created the Tribe's Financial Plan, secured capital, oversaw the leasing of the 1.5 million acre estate, and "[s]old Ute Energy for approximately $1 Billion." (*Id*. at 59–61).

21. On January 15, 2020, the Tribe sent Jurrius a letter summarizing what it considered to be his breaches of the Settlement Agreement. (*See* ECF No. 239-1 at 47–49). That letter states that Jurrius has breached the Settlement Agreement by producing the Jurrius Production, failing to notify the Tribe and/or obtain its approval before producing the Jurrius Production, and testifying at the Evidentiary Hearing, making solicitations regarding a proposed pipeline project, and referenced the Tribe on his website, promotional materials, and LinkedIn profile. (*Id*.).

22. Following the court's August 31, 2020 hearing on the Tribe's motion to quash Becker's subpoena, the Tribe sent the court four documents (the "Documents") for it to review *in camera*—the Statement of Claims, Jurrius's Counterclaim in Arbitration,

the Tribe's Answer to Jurrius's Counterclaim (together the "Arbitration Documents"), and the Settlement Agreement.

DISCUSSION

The Order to Show Cause concerned, and directed to Tribe to address, two distinct issues. First, why the Documents should not be filed on the docket and made accessible to all parties and the public. Second, and more significant, why the Tribe should not be sanctioned for abusing the judicial process and/or acting in bad faith for initiating the Arbitration against Jurrius as retaliation for him testifying at the Evidentiary Hearing or as a means to intimidate and influence him from testifying in future proceedings in this matter. (*See* ECF No. 221).

I. The Documents should be filed on the Record in this matter.

The Tribe has represented that it does not object to placing the Arbitration Documents on the record in this matter. (*See* ECF No. 228). Jurrius has also consented to the same. (*See* ECF No. 238). As such, the Court will file the Arbitration Documents (being the Statement of Claims, Jurrius's Counterclaim in Arbitration, and the Tribe's Answer to Jurrius's Counterclaim) on the dockets in Case No. 2:16-cv-579 and Case No. 2:15-cv-958.

The parties disagree, however, as to whether the Settlement Agreement should be made public in its entirety. The Tribe has filed a redacted version of the Settlement Agreement (the "Redacted Settlement Agreement") and asks that that it be permitted to file the unredacted version under seal. (*See* ECF No. 228). Becker and Jurrius both object to this request and argue that only an unredacted version of the Settlement Agreement should be filed.

As recognized by DUCivR 5.3(a), because "[t]he records of the court are presumptively open to the public," "[t]he sealing of pleadings, motions, memoranda, exhibits, and other documents or portions thereof is highly discouraged." As such, "the public shall have access to all Documents filed with the court and to all court proceedings" unless those documents are "restricted by statute or court order." DUCivR 5.3(a). Nonetheless, the court has the discretion to "seal documents if the public's right of access is outweighed by competing interest. In exercising this discretion, we weigh the interests of the public, which are presumptively paramount, against those advanced by the parties. The party seeking to overcome the presumption of public access to the documents bears the burden of showing some significant interest that outweighs the presumption." *Helm v. Kansas*, 656 F.3d 1277, 1292 (10th Cir. 2011) (internal quotation marks and citation omitted).

Only two paragraphs (and one sentence) are redacted in the Redacted Settlement Agreement. The redacted information references 1) what interests Jurrius is conveying to the Tribe, 2) what the Tribe is paying Jurrius for those interests, and 3) bank information for the transfer of monies. Each of these redactions will be discussed in turn.

A. Information regarding what interests Jurrius conveyed to the Tribe should be made public.

As stated above, in order to overcome the presumption that court records should be made open to the public, the Tribe must present a "significant interest" that justifies keeping a record private. *See Helm*, 656 F.3d at 1292 (10th Cir. 2011). While the Tribe seeks to keep private information regarding what interests Jurrius conveyed to it as part of the Settlement, much, if not all, of that information is contained in individual, and unredacted, Assignments of Interests that are attached to the Redacted Settlement

Agreement and thus are already a part of the public record in this case. Because this redacted information has already been made public, the court cannot find that the Tribe has a "significant interest" in keeping it redacted from the Settlement Agreement. The Tribe is therefore not entitled to redact information regarding what interests Jurrius conveyed to the Tribe from the Settlement Agreement.

B. Information regarding what Jurrius was paid for the interests he transferred should be made public.

The Tribe also seeks to redact how much it paid Jurrius under the parties' settlement. While the Tenth Circuit has recognized that "preserving the confidentiality of settlement agreements may encourage settlement, and that denying a motion to seal may chill future settlement discussions," the Tribe has failed to show a significant interest that justifies why *only this* portion of the Settlement Agreement should be kept from the public. *Colony Ins. Co. v. Burke*, 698 F.3d 1222, 1241 (10th Cir. 2012); *see also XPO Logistics, Inc. v. Leeway Glob. Logistics, LLC*, No. 2:15-CV-00703-CW, 2018 WL 400769, at *5 (D. Utah Jan. 12, 2018). The Tribe's primary argument on this point is that the information is irrelevant to the matters before the court. Such rationale does not outweigh "the public's right of access." *See Helm*, 656 F.3d at 1292. Moreover, Jurrius argues that the failure to disclose the amounts that the Tribe paid to him is prejudicial because it implies that the settlement was unfavorable to him, contrary to the actual facts. The court is persuaded by Jurrius's argument. The Tribe is therefore not entitled to redact information regarding how much Jurrius was paid from the Settlement Agreement.

C. Bank account information contained in the Settlement Agreement should remain redacted.

The first paragraph of the Settlement Agreement contains bank account numbers. That information qualifies for redaction under DUCivR 5.2-1 and Rule 5.2 of the Federal

Rules of Civil Procedure and should therefore be redacted from the Settlement Agreement before it is filed in this matter.

For the reasons stated herein, the Tribe's request to file the Settlement Agreement under seal is **DENIED**, and the court will file the Settlement Agreement on the dockets in Case No. 2:16-cv-579 and Case No. 2:15-cv-958. The filed version will, however, and in compliance with DUCivR 5.2-1 and Rule 5.2 of the Federal Rules of Civil Procedure, have redacted from it any bank account numbers contained therein.

II. The Tribe's initiation of Arbitration against Jurrius was done in bad faith and was an abuse of process.

Following Jurrius's and Becker's allegations that the Tribe initiated the Arbitration against Jurrius as retaliation for him testifying at the Evidentiary Hearing or as a means to intimidate and influence him from testifying in future proceedings in this matter, the Order directed the Tribe to show why it should not be sanctioned for abusing the judicial process and/or acting in bad faith. (*See* ECF No. 221).

It is well established that a district court "has the power to control admission to its bar and to discipline attorneys who appear before it." *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991). "Because of their very potency, [these] inherent powers must be exercised with restraint and discretion." *Id*. (citation omitted). While a district court's power to sanction "reaches beyond the multiplication of court proceedings and authorizes sanctions for wide-ranging conduct constituting an abuse of process," (*Farmer v. Banco Popular of N. Am.*, 791 F.3d 1246, 1257 (10th Cir. 2015) (citation omitted)), in exercising that power, a court "must comply with the mandates of due process, both in determining that the requisite bad faith exists and in assessing fees." *Chambers*, 501 U.S.

at 50. Generally, sanctions may be warranted for conduct that "abuses the judicial process" or is performed in bad faith. *Id*. at 43.

While the Tenth Circuit has not developed a definitive standard for what conduct constitutes an "abuse of process," the Supreme Court in *Chambers* found that sanctions were appropriate because the accused party had engaged in a "sordid scheme of deliberate misuse of the judicial process designed to defeat [its opponent's] claim by harassment, repeated and endless delay, mountainous expense and waste of financial resources." *Id*. at 56–57. There is similarly no set standard for when conduct arises to the level of "bad faith." The Tenth Circuit has, however, made it clear that establishing bad faith is a high bar, as "bad faith requires more than a mere showing of a weak or legally inadequate case, and the exception is not invoked by findings of negligence, frivolity, or improvidence." *Autorama Corp. v. Stewart*, 802 F.2d 1284, 1288 (10th Cir. 1986). Generally, actions taken "vexatiously, wantonly, or for oppressive reasons" support a finding of bad faith, *see Kornfeld v. Kornfeld*, 393 F. App'x 575, 577 (10th Cir. 2010), as does conduct that shows "intentional or reckless disregard of the rules," "substantial and prejudicial obduracy," or "delays or disrupts the litigation." *See Xyngular Corp. v. Schenkel*, 200 F. Supp. 3d 1273, 1301–02 (D. Utah 2016), *aff'd sub nom. Xyngular v. Schenkel*, 890 F.3d 868 (10th Cir. 2018). An action need not be motived by "actual ill will" to constitute bad faith. *Id*.

The Tribe informed Jurrius that it would be initiating Arbitration against him just eight days after Jurrius testified at the Evidentiary Hearing, and it ultimately initiated the proceedings approximately twelve days later. (*See* ECF No. 239-1 at 47–49). This strongly supports that the Arbitration was indeed initiated to punish Jurrius for testifying or to discourage him from testifying in future proceedings in this matter. The Tribe rejects this

allegation, arguing that the Arbitration was filed in response to Jurrius's continued failure to comply with the terms of the Settlement Agreement and that "[t]he Court's inherent power simply does not extend to imposing sanctions for a party's pursuit of a non-frivolous claim in another forum." (ECF No. 243 at 13).

A. The Tribe's allegations that Jurrius violated the Settlement Agreement are meritless.

The crux of the Tribe's response to the Order is that because it had legitimate, non-frivolous claims that Jurrius had violated the Settlement Agreement when it initiated the Arbitration, the court cannot find that the Arbitration was initiated in bad faith or that its initiation of the Arbitration against Jurrius was an abuse of process. The Tribe asserts that Jurrius breached[5] the Settlement Agreement by: 1) producing the Jurrius Production; 2) testifying at the Evidentiary Hearing; 3) impermissibly using the Tribe as a reference to solicit business; 4) conducting business on Tribal Territory; and 5) impermissibly entering Tribal Territory. Each of these alleged violations will be discussed in turn.

[5] The court acknowledges that the Tribe has amended its Statement of Claims to clarify that it is now only alleging that the *procedure* that Jurrius followed before producing the Jurrius Production and testifying at the Evidentiary Hearing constituted breaches of the Settlement Agreement, and that it is therefore no longer alleging that Jurrius's production of the Jurrius Production or testimony themselves substantively violated the Settlement Agreement. (*See* ECF No. 228-3). The Tribe represents this amendment was made "to eliminate language that may have given the Court pause." (*See* ECF No. 228 at 6–7). This attempt to retroactively soften the claims in Arbitration does not, however, change or mitigate the facts that are material to the Order to Show Cause. If anything, these changes highlight the fact that the Arbitration was indeed initiated, at least in part, in response to Jurrius producing the Jurrius Production and testifying at the Evidentiary Hearing.

Central to the Order to Show Cause is the question of why the Tribe initiated Arbitration against Jurrius. As such, any modifications that the Tribe made to its Arbitration claims are irrelevant; those changes only reflect the Tribe's current thinking; the original claims represent its original intent. As such, for purposes of this Order, the court will read, and analyze, the Tribe's claims in Arbitration as they were stated in the Statement of Claims—as allegations that Jurrius "willfully violated both the substance and process" of the Settlement Agreement when he produced the Jurrius Production and gave testimony at the Evidentiary Hearing. (*See* Statement of Claims at ¶¶ 31, 33).

1. *The Jurrius Production*

In relevant part, the Settlement Agreement bars Jurrius from disclosing "all records of the Tribe and all information generated or accumulated by [Jurrius] in connection with [his employment]" that are not "in the public domain." (ECF No. 228-4 at ¶ 4(d)). It also provides that if Jurrius becomes "subject to any legal obligation to disclose . . . confidential information," he is first required to "notify the [Tribe] of the fact" and "discuss [with the Tribe] in good faith ways in which [he] can reasonably make disclosures . . . ." (*Id*.). The Tribe alleges that Jurrius Production violated both of these provisions, both in substance and in process,[6] by producing the Jurrius Production.

The Tribe alleges that Jurrius produced "internal tribal documents, materials, and information, or documents "which could be considered privileged or confidential." (*See* Statement of Claims at ¶¶ 21, 22). But this is not what the Settlement Agreement prohibits. Jurrius is only barred from disclosing documents that were not "in the public domain." (*See* ECF No. 228-4 at ¶ 4(d))

As discussed above, the Jurrius Production consisted of: photographs taken of a public event; four Tribal ordinances; five minutes from Business Committee Meetings; ten Tribal resolutions; correspondence from the Department of Interior, Bureau of Indian Affairs; a section from a Federal law; a Fax cover page regarding the recording of documents among public land records; two photographs of bulletins posted in a public newspaper; and the Ute Energy Documents. (*See* ECF No. 239-1 at 11). Each of these documents, with the exception of, possibly, the Ute Energy Documents, was in the public domain. Even the Ute Energy Documents relate to public matters known to all the parties

[6] *See supra* note 6.

involved in the transaction and likely would have been available to Tribal members. As such, the Jurrius Production was, facially, not a violation of the Settlement Agreement, and the Tribe alleging otherwise is **MERITLESS**.

Turning to the only claim regarding the Jurrius Production that is not meritless on its face—that Jurrius violated the Settlement Agreement by disclosing the Ute Energy Documents—the court finds that any merit the claim may have had is eliminated by the fact that those documents were disclosed pursuant to the Tribe's *agreed-upon procedure*.

The Jurrius Production was executed pursuant to the Production Subpoena, which the Tribe moved to quash. (*See* ECF Nos. 178, 179). Becker and the Tribe subsequently resolved the dispute over the Production Subpoena and entered into a Production Stipulation that governed how the requested information would be provided. (*See* ECF No. 180). Although Jurrius was not directly a party to the Production Stipulation, Becker's counsel forwarded him a copy of it, and Jurrius followed the procedure outlined therein when he made the Jurrius Production. (*See* ECF No. 236-3).

As such, and pursuant to the Production Stipulation, the process by which the Tribe agreed to have the Ute Energy Documents disclosed was followed. That process treated the documents "as 'attorney eyes only'" and afforded the Tribe the opportunity to review the same for privilege and confidentiality before they were shared with Becker and Judge Lawrence. (*See* ECF No. 180). The process Jurrius followed in disclosing the Ute Energy Documents therefore satisfied the goals of the Settlement Agreement—that the Tribe be given an opportunity to weigh in on how disclosures can be made without compromising confidentiality. (*See* ECF No. 228-4 at ¶ 4(d)).

Having received the benefit of its bargain in the Production Stipulation and the Settlement Agreemeing, the Tribe resorts to a purely technical claim in its Arbitration—that Jurrius was required, but failed, to personally confer with it before he provided the Ute Documents. In essence, the Tribe is complaining that Jurrius did not first ask it "Mother, May I?" This contention is frivolous. The Tribe agreed to a process for the documents to be disclosed, Jurrius was informed of that process, and he followed the same. The Tribe was able to assess the Ute Energy Documents before they were distributed to the parties in this matter, and confidentialities were not violated. The Tribe's contention that Jurrius violated the Settlement Agreement by producing the Jurrius Production is **MERITLESS**.

2. *Testimony at the Evidentiary Hearing*

The Settlement Agreement's provisions regarding the disclosure of information and the process by which Jurrius must follow before he may make such disclosures are also relevant to the Tribe's claims that Jurrius violated the Settlement Agreement, both in substance and in process,[7] by testifying at the Evidentiary Hearing. (*See* ECF No. 228-4 at ¶ 4(d)). And like the Tribe's complaints regarding the Jurrius Production, those claims are also meritless.

On January 7, 2020, Becker called Jurrius as a witness and compelled him to testify at the Evidentiary Hearing. Before Jurrius took the stand, his counsel made a statement to the court expressing concern that the compelled testimony could be seen as a violation of the Settlement Agreement. (*See* ECF No. 249 at 277:17–280:4). In response to this concern, the court recognized that there has been "an excessive claim of privilege" in this action, reminded the parties that "[i]f there is a privilege that would entitle a party to have

[7] *See supra* note 6.

the testimony not disclosed, the burden falls on the party who has that privilege," and stated that the Tribe's counsel is "more than capable of asserting those privileges" and that it would hear counsel on any instance where they "assert the privilege." (*See id*. at 280:5–281:7). The Tribe subsequently raised four objections that the Jurrius was providing privileged or confidential information, but each was overruled. (*See id*. at 288:8–22; 293:6–295:9l 296:4–6; 362:2–363:25).

The Tribe claims that Jurrius's testimony violated the Settlement Agreement in three ways. First, the testimony itself was a violation.[8] (*See* Statement of Claims at ¶ 24). Second, it alleges that Jurrius failed to notify the Tribe before testifying. (*Id*. at ¶ 27). Third, it alleges that Jurrius's testimony impermissibly "included extensive details obtained in connection with his employment with the Tribe . . . ." (*Id*. at ¶ 28).

The Settlement Agreement does not bar Jurrius from testifying in a proceeding. As such, his conduct at the Evidentiary Hearing did not, by itself, violate the Settlement Agreement, and the Tribe's allegations otherwise are **MERITLESS**. It would be prone to widespread abuse if private parties could preclude testimony that would be relevant to a third party or interfere with the ability of the court to compel such testimony. The Tribe's second claim, like its claim related to the Jurrius Production, complains that Jurrius did not follow the technical procedures set forth in the Settlement Agreement before testifying. But, as discussed above, the purpose of those procedures was to provide the Tribe with an opportunity to object to any content that it believed was confidential or privileged. While it is true that Jurrius did not consult with the Tribe before he was forced to testify, it is equally true that the Tribe was given a full opportunity to object to the content of any of

[8] *See supra* note 6.

his testimony and that it took full advantage of that opportunity. (*See* ECF No. 249 at 277:17–281:7; 288:8–22; 293:6–295:9l; 296:4–6; 362:2–363:25). As such, the Tribe received the full benefit of the Settlement Agreement and was not injured by Jurrius's technical failure to notify it before he offered testimony. Again, the Tribe's allegations again resort to nothing more than a contention that Jurrius did not ask "Mother, May I?" Such a claim is **MERITLESS**.

The Tribe's third allegation is similarly **MERITLESS**. At the Evidentiary Hearing, the court, in considering and responding to the Tribe's numerous objections to the testimony Jurrius offered, determined that the information being presented was not privileged, confidential, or otherwise protected. (*See* ECF No. 249 at 288:8–22; 293:6–295:9l; 296:4–6; 362:2–363:25). As such, it was already determined, before the Tribe initiated the Arbitration, that Jurrius's testimony did not disclose confidential information, and the Tribe's assertion otherwise in Arbitration is **MERITLESS**.

3. *Using the Tribe as a Reference to Solicit Business*

In relevant part, the Settlement Agreement bars Jurrius from "us[ing] the Tribe as a reference when soliciting new or continued business with other Tribes or any other entity" (ECF No. 228-4 at ¶ 4(g)). In support of its claim that Jurrius violated this provision, the Tribe alleges that Jurrius used the Tribe's "name and work history in the solicitation of continued or new business." (*See* Statement of Claims at ¶ 35). The Tribe's primary complaints regarding this alleged violation is that Jurrius represented on his LinkedIn page, a resume attached thereto, and on other websites, that he worked for the Tribe and detailed some of the work he did during his employment. But these actions are not what the Settlement Agreement prohibits. While each of these statements *referenced* the Tribe, in none was Jurrius *using the Tribe as a reference*. Moreover, the references that Jurrius

made to the work he performed while employed by the Tribe were factual in nature, designed only to express his employment during the relevant time period; they were not made in order to "solicit continued or new business." Such representations did not, on their face, violate the Settlement Agreement. The Tribe's allegation that Jurrius violated Paragraph 4(g) of the Settlement Agreement by referring to it on websites, his LinkedIn profile, and on his resume is **MERITLESS**.

4. *Conducting Business on Trial Territory*

The Settlement Agreement bars Jurrius, or any entity for which he owns at least a five percent interest, from conducting business on Tribal Territory "with the Tribe or with any Tribally-related entities or enterprises . . . ." (ECF No. 228-4 at ¶ 4(f)). The Tribe's sole support for its allegation that Jurrius breached this provision is contained in its June 6, 2017 letter to Jurrius and states that Indigena Capital, an entity that it alleges Jurrius is affiliated with, had solicitated the Tribe's "participation in a petroleum pipeline project that apparently is planned to cross portions of the [Tribe's] Reservation." (*See* ECF No. 239-1 at 54–55; Statement of Claims at ¶ 19; ECF No. 228-2 at ¶ 5).

But it is not a violation of the Settlement Agreement for an entity with which Jurrius is merely affiliated with to conduct or solicit busines on Tribal Territory; he must be at least a 5% owner of the entity. Here, Jurrius has no ownership in Indigena Capital. (*See* ECF No. 257 at 35:23–36:2). Indeed, the Tribe acknowledges in its Statement of Claims that Jurrius is the "principal and/or CEO" of Indigena Capital, LP, Indigena Capital GP, Inc., Indigena Capital Projects 1 GP, Inc., and Indigena Capital Projects 1 GP, LLC.[9] (*See*

[9] It is unclear from the Statement of Claims or the June 6, 2017 letter which of these entities was involved in this proposed transaction.

Statement of Claims at ¶ 3). The Tribe's allegation that Jurrius violated Paragraph 4(f) of the Settlement Agreement by conducting business on Tribal Territory is **MERITLESS**.

5. *Entering Tribal Territory*

As recognized above, the Tribe's offers no support for its claim that Jurrius impermissibly entered "Tribal Territory" in violation of the Settlement Agreement.[10] (*See* Statement of Claims at ¶ 38; ECF No. 239-1 at 7). The Tribe's unsupported allegation that Jurrius violated Paragraph 4(i) of the Settlement Agreement by impermissibly entering Tribal Territory is baseless on its face and thus **MERITLESS**.

B. The Tribe's initiation of Arbitration against Jurrius was done in bad faith and was an abuse of process.

The Tribe argues that it did not initiate Arbitration in bad faith, and that it doing so was not an abuse of process, because its actions were done to pursue legitimate, and non-frivolous claims, not to punish Jurrius.[11] Simply put, the Tribe's position is that the court "can't punish a litigant for bringing nonfrivolous claims." (*See* ECF No. 257 at 54:1–2). But none of the Tribe's claims against Jurrius has merit. Each is frivolous. The Tribe is therefore not shielded from a finding that it acted in bad faith.

As discussed above, the fact that the Tribe's claims against Jurrius were frivolous is not enough to show it acted in bad faith in initiating the Arbitration. *See Autorama*

[10] The only example of conduct that could potentially be seen as relating to this allegation was provided bv Jurrius's counsel, who at the hearing on the Order to Show Cause acknowledged that in 2017 Jurrius attended a meeting at Duchesne's city hall. (See ECF No. 257 at 35:17–22). To the extent that the Tribe intended this action to serve as the basis for its allegation that Jurrius violated of the Settlement Agreement, the court finds that Jurrius attending a public meeting at a public building on land that is not owned or controlled by the Tribe is not a material breach of the Settlement Agreement and does not, therefore, support its allegations that Jurrius violated the Settlement Agreement.

[11] The Tribe asserts that *even if* its goal in initiating Arbitration really was to punish Jurrius, that is irrelevant, because it was had non-frivolous claims to assert. (*See* ECF No. 257 at 53:18–54:5).

Corp., 802 F.2d at 1288. But the Tribe's bad conduct was not limited to just filing frivolous claims against Jurrius. It blatantly misrepresented the terms of the Settlement Agreement to artificially bolster these clearly frivolous claims. The Settlement Agreement bars Jurrius from disclosing documents and information that are not "in the public domain," but the Tribe attacked him for disclosing "internal tribal documents, materials, and information, or documents "which could be considered privileged or confidential." (*Compare* ECF No. 228-4 at ¶ 4(d) *with* Statement of Claims at ¶¶ 21, 22). It only barred him from "us[ing] the Tribe as a reference," but the Tribe attacked him for merely *referring* to the Tribe. (*Compare* ECF No. 228-4 at ¶ 4(g) *with* Statement of Claims at ¶ 19). Finally, while the Settlement Agreement bars Jurrius, or any entity for which he owns at least a five percent interest, from conducting business of Tribal Territory, it attacked him on the basis that a company that he had no ownership of solicited the Tribe. (*Compare* ECF No. 228-4 at ¶ 4(f) *with* Statement of Claims at ¶¶ 3, 19). And the Tribe's misrepresentations were not limited to just the Settlement Agreement. The Tribe alleged that Jurrius impermissibly shared confidential information at the Evidentiary Hearing after the court expressly ruled that the information was not privileged. (*See* ECF No. 249 at 277:17–281:7; 288:8–22; 293:6–295:9l 296:4–6; 362:2–363:25).

Basing an action on such blatant misrepresentations rises above frivolousness. The Tribe's initiation of Arbitration was wanton and vexatious. It was done with intentional disregard of the terms of the Settlement Agreement and, at a minimum, reckless disregard for the Tribe's, and its counsels' duties of candor. The Tribe initiated Arbitration against Jurrius in bad faith.

This begs the question: why would the Tribe blatantly misrepresent the terms of the Settlement Agreement to initiate Arbitration against Jurrius based on wholly unsupported and/or frivolous allegations? After thoroughly reviewing the record in this matter, the court can reach but one conclusion: to punish Jurrius for testifying against it and/or to discourage him from testifying in future proceedings in this matter.[12] This conclusion is particularly supported by the misrepresentations the Tribe made to bolster, and support, its claims in Arbitration; the timing of the Tribe's initiation of the Arbitration; and the fact that the Statement of Claims stated *on its face* that it considered the Jurrius's participation in this matter, through the Jurrius Production and his testimony at the Evidentiary Agreement, to be violations of the Settlement Agreement.[13]

Filing a patently frivolous action in order to punish an individual is "a sordid scheme of deliberate misuse of the judicial process" that was designed to harass Jurrius. *See Chambers*, 501 U.S. at 56–57. It is an abuse of process.

C. The proper sanction for the Tribe's bad faith action and abuse of process is for it to pay the fees that Becker and Jurrius incurred in prosecuting those actions.

Having found that the Tribe's initiation of Arbitration against Jurrius was done in bad faith and was an abuse of process, the court must determine the proper sanction for the Tribe's conduct. *See Mountain W. Mines, Inc. v. Cleveland-Cliffs Iron Co.*, 470 F.3d 947, 954 (10th Cir. 2006) (noting that the Tenth Circuit "insist[s] that a trial judge make a finding of bad intent or improper motive" in order to award fees as a sanction). The

[12] Becker and Jurrius argue that the Tribe was motivation to also send a signal to other potential witnesses of what could happen to them if they also testified against the Tribe. While the court notes that this could certainly be a consequence of the Tribe's actions here, the record before it does not allow it to find that the Tribe's actions were done with an intent to intimidate potential witnesses.

[13] *See supra* note 6.

Tenth Circuit has recognized that "[w]hen a party acts 'in bad faith, vexatiously, wantonly, or for oppressive reasons,' a court may properly depart from the traditional American rule disfavoring fee awards." *Id*. (citation omitted). Having found that the Tribe initiated the Arbitration in bad faith, vexatiously, wantonly, or for oppressive reasons, and for the purpose of punishing Jurrius for testifying against it and/or discouraging him from testifying in future proceedings in this matter, the court finds that the proper sanction for the Tribe's conduct is for it to pay the fees that Becker and Jurrius incurred in prosecuting the same.

As such, the Tribe is **HEREBY ORDERED** to pay Becker and Jurrius the fees in prosecuting his matter. This time shall include any and all time expended in, and otherwise related to: drafting the Notice of Intent to Serve Subpoena upon Snow Christensen & Martuneau (ECF No. 205); responding to the Motion to Quash (ECF No. 206); drafting the Motion for Protective Order (ECF No. 214); responding to the Order to Show Cause (ECF No. 221); preparing for and attending any hearings held on the same. Becker and Jurrius are **ORDERED** to, within **ten (10) days** of the date of this order, to submit to the court a sworn and itemized statement showing the actual time expended in such matters and the rate at which fees were computed.

CONCLUSION

As more fully discussed herein, the court finds that the Tribe's initiation of Arbitration against Jurrius was done in bad faith and was an abuse of process. As such, and as detailed herein, the Tribe is **HEREBY ORDERED** to pay the fees that Becker and Jurrius incurred in prosecuting this matter.

The Tribe's request to file a redacted version of the Settlement Agreement on the dockets in Case No. 2:16-cv-579 and Case No. 2:15-cv-958 is **DENIED**, and as discussed herein, the court will file a full version of the document on the docket.

Finally, the court finds that the development of the record in this matter, together with the relief ordered herein, moots Becker's Notice of Intent to Serve Subpoena upon Snow Christensen & Martuneau (ECF No. 205). As such, the Tribe's Motion to Quash that Subpoena (ECF No. 206) and Jurrius's Motion for Protective Order from the same (ECF No. 214) are **HEREBY DENIED AS MOOT**.

DATED this 31st day of March, 2021.

BY THE COURT:

Clark Waddoups
United States District Judge

AMERICAN ARBITRATION ASSOCIATION

COMMERCIAL ARBITRATION TRIBUNAL

UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION, Claimant, vs. JOHN P. JURRIUS; THE JURRIUS GROUP LLP; THE JURRIUS OGLE GROUP LLP, Respondents.	CASE NO. 01-20-0000-3669 **ORDER**

The Arbitration Panel has received a letter from Respondents' counsel dated April 2, 2012, requesting permission to file a motion to dismiss the arbitration with prejudice, based on a federal district court ruling in the *Becker* case dated March 31, 2021, holding "that the Tribe's initiation of Arbitration against Jurrius was done in bad faith and was an abuse of process," and imposing sanctions. The district court order addressed in detail the merits of the claims raised in this arbitration. A copy of a proposed Motion for Summary Disposition was attached to counsel's letter.

By letter also dated April 2, 2021, Claimant's counsel responded that if the Panel decides to grant the request for permission to file the dismissal motion, the Tribe and its counsel request until noon on Wednesday, April 7, 2021, to respond. Claimant also notes that under the Scheduling Order in this case, the deadline for filing dispositive motions was December 18, 2020, and therefore Claimant opposes the request for permission to file the motion.

Based on the district court's order, the Panel finds good cause to waive the deadline in the Scheduling Order for filing dispositive motions. Therefore, the panel will entertain the request to file the Motion for Summary Disposition. Claimant may respond to the request, including stating its reasons why the Motion should not be granted in the form of a response to the Motion for Summary Disposition, by noon on Wednesday, April 7, 2021. Respondents may file a reply to Claimant's Response by noon on Friday, April 9, 2021.

Dated: April 5, 2021.

/Patrick Irvine/

Patrick Irvine
Arbitrator, for the Panel

AMERICAN ARBITRATION ASSOCIATION

COMMERCIAL ARBITRATION TRIBUNAL

UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION, Claimant, vs. JOHN P. JURRIUS; THE JURRIUS GROUP LLP; THE JURRIUS OGLE GROUP LLP, Respondents.	CASE NO. 01-20-0000-3669 **ORDER**

The Arbitration Panel has reviews the Motion for Summary Disposition, Claimant's response, Respondents' reply, and Claimant's sur-reply, filed in response to the Panel's order dated April 9, 2021.

The Panel finds no material issues of fact with regard to Claims 1, 2 and 3. Therefore, summary judgment is granted to Respondents with regard to those claims. With regard to Claims 4 and 5, the Panel will benefit from further briefing as detailed below. After further briefing the Panel will decide whether there are material issues of fact with regard to the remaining claims that require a hearing and one will be scheduled accordingly, if necessary.

With regard to Claims 1 and 2, the Panel determines that the controlling issue is whether Jurrius' production of documents and testimony before the district court violated the settlement agreement. It is undisputed that Jurrius produced documents and testified pursuant to a subpoena issued by the district court at the request of Becker. Claimant objected, but Claimant and Becker agreed on a procedure for Jurrius to

produce documents. Jurrius was informed of this procedure and the fact that it was agreed to by Becker and Claimant. At the hearing, Claimant made several objections to information Jurrius was providing, and in each case the court overruled the objection. Under these circumstances, the Panel finds Jurrius did not violate the settlement agreement. Claimant argues Jurrius did not notify or consult with the Claimant before producing documents or testifying. That may be true, but Claimant agreed on the procedure for his production of documents, and was represented at and actively involved in the hearing. Given the subpoena, the parties' agreement on a procedure for production of documents, Claimant's plain notice and knowledge of both the production and testimony, and the district court's overruling of Claimant's claims of privilege and confidentiality, Jurrius did not violate the settlement agreement by complying.

With regard to Claim 3, that Jurrius will not "use the Tribe as a reference when soliciting new or continued business with other Tribes or any other entity," the Panel finds no dispute of facts. How Jurrius mentioned Claimant is not disputed. What is disputed is the meaning of "use the Tribe as a reference when soliciting new or continued business with other Tribes or any other entity." Claimant argues "reference" means "the act of referring to something or someone," citing the Merriam-Webster Online Dictionary (which actually lists as one definition: "the act of referring or consulting"). The complete definition of the noun "reference" from the same source is helpful:

> **1** **:** the act of referring or consulting
> **2** **:** a bearing on a matter **:** RELATION
> // in *reference* to your recent letter
> **3** **:** something that refers: such as
> **a** **:** ALLUSION, MENTION

b **:** something (such as a sign or indication) that refers a reader or consulter to another source of information (such as a book or passage)
c **:** consultation of sources of information

4 **:** one referred to or consulted: such as
a **:** a person to whom inquiries as to character or ability can be made
b **:** a statement of the qualifications of a person seeking employment or appointment given by someone familiar with the person
c **(1) :** a source of information (such as a book or passage) to which a reader or consulter is referred
(2) : a work (such as a dictionary or encyclopedia) containing useful facts or information
d **:** DENOTATION, MEANING

https://www.merriam-webster.com/dictionary/refer (last visited April 13, 2021). In context of the settlement agreement, the Panel finds the most reasonable definitions to be 4a and b. The settlement agreement prohibits "using the Tribe as a reference," which most closely comports to those definitions. If the settlement agreement prohibited "referring to" or "mentioning" the Tribe in any way, Claimant's definition would be more plausible. Moreover, factual statements regarding past employment are not made to "solicit continued or new business" and to the extent someone reading the information actually contacted Claimant to verify the facts it does not appear the result would be a positive reference.

To the extent Claim 6 is based on the facts asserted in Claims 1, 2 and 3, it is also denied.

With regard to Claims 4 and 5, the Panel concludes its decision may hinge on factual determinations. The parties have not fully briefed these claims, with more complete references to depositions and declarations. The Panel recognizes that Claimant may have intended to introduce its evidence on these points through testimony at the hearing, but has concluded the most efficient way to address the issues as they are currently presented is to order both parties to file additional pleadings. Respondent is

directed to file a motion for summary disposition, on or before April 23, 2021, addressing Claims 4 and 5, and Claim 6 to the extent it relates to Claims 4 and 5, not to exceed ten pages, with a statement of facts highlighting the portions of the record and pointing out why there exist no issue of material fact requiring a hearing. Claimant can respond, on or before May 7, 2021, not to exceed ten pages, and may file its own controverting statement of facts, including declarations of witnesses Claimant would call at a hearing on this matter. Respondent may file a reply on or before May 14, 2021.

The hearing set to begin April 14, 2021, is vacated.

Dated: April 13, 2021.

/Patrick Irvine/

Patrick Irvine
Arbitrator, for the Panel

AMERICAN ARBITRATION ASSOCIATION

COMMERCIAL ARBITRATION TRIBUNAL

UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION, Claimant, vs. JOHN P. JURRIUS; THE JURRIUS GROUP LLP; THE JURRIUS OGLE GROUP LLP, Respondents.	CASE NO. 01-20-0000-3669 **ORDER**

The Arbitration Panel has reviewed Respondents' Motion for Summary Disposition of Claims 4 through 6, Claimant's Response, and Respondents' Reply. Claimant has also filed a Motion for Leave to File Surreply, which Respondents responded to by letter.

Finding no good cause, the Panel denies the Motion for Leave to File Surreply.

CLAIM 4.

Claim 4 "asserts that Respondents, acting directly or indirectly through agents and associates, have violated Section 4(f) by conducting business on 'Tribal Territory' as defined by the Settlement Agreement."

Section 4(f) of the Settlement Agreement ("Agreement") states:

> (f) For a period of 25 years, Defendants will not conduct business of any kind on Tribal Territory with the Tribe or with any Tribally-related entities or enterprises, or with Ute Tribe allottees. Tribally-related entities or enterprises shall mean any partnership, company, corporation, or other business entity in which the Tribe or a Tribal entity or enterprise has an ownership interest, whether through membership interests, stock or otherwise. Tribal Territory shall be defined as all lands

> located within the original boundaries of the Uintah Valley Reserve as established by Executive Order in 1861 and confirmed. by Congress in 1864, the Uncompahgre Reservation as established by Executive Order in 1882, the Hill Creek Extension established pursuant to the Act of March 11, 1948, 62 Stat. 72, the Naval Oil Shale Reserve (NOSR) II lands. returned to the Ute Indian Tribe pursuant to the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, 114 Stat. 1654, and all lands which have been or may hereinafter be acquired for the use and benefit of the Ute Indian Tribe, all of which such lands fall within the State of Utah. Defendants shall not be considered to "conduct .business" for purposes of this subpart where Defendants neither (i) hold an ownership interest of more than five percent in an entity that engages in such a business nor (ii) participate in any aspect of the business pertaining to the Tribe, Ute Energy LLC, the Ute Venture Fund Board, or the Ute Tribal Enterprises.

Respondents essentially argue this provision only applies to an entity if Respondents directly own more than five percent of that entity, and if not, the provision only prohibits Respondents from participating in business pertaining to the specifically listed organizations (Tribe, Ute Energy LLC, the Ute Venture Fund Board, or the Ute Tribal Enterprises). Reply at 4 ("Under that sentence, the threshold issue for Claim 4 is a legal determination: Does 'ownership' mean ownership, or is it the more 'flexible' concept the Tribe advocates?"). Respondents argue that because none of the entities alleged to have conducted business were owned by Respondents, there was no violation. Respondents also argue the June 2017 meeting in Denver did not violate the Agreement because it was not within Tribal Territory, did not involve an entity owned directly by Respondents, and was merely an exploratory conversation and not "doing business" with the Tribe.

Claimant responds by pointing to the activities of 4X and Indigena Capital, arguing that Jurrius "did far more than participate in the business, he conceived of it, directed it,

and ultimately profited from it." Response at 29. Essentially, Claimant argues Jurrius should be treated as having ownership indirectly through other entities, and his role at Indigena Capital should be treated as his participation in any business related to that entity. Response at 6 ("As discussed above, Mr. Jurrius has always had ownership of Indigena Capital through his ownership of Indigena Holdings."); 18 ("Mr. Jurrius, as CEO of Indigena Capital, LP would had to have approved, or 'signed off,' on 4X Resources receiving its initial investment to conduct its business of acquiring Ute Tribe allottee mineral rights in the Uintah Basin.").

The panel concludes there is no issue of material fact regarding ownership of the various entities. Claimant argues it is unclear whether Jurrius owned more than 25% of Indigena Holdings, LLC, but there is no dispute that he did not directly own any portion of the entities alleged to have actually conducted business. Therefore, as Respondents argue, the issue before the Panel is whether the Agreement applies to indirect ownership. We conclude it does not.

The Agreement provides Respondents "will not conduct business of any kind on Tribal Territory with the Tribe or with any Tribally-related entities or enterprises, or with Ute Tribe allottees." It does say "directly or indirectly" as Claimant asserts in its claim. Moreover, it expressly allows Respondents to engage in certain activities by defining "conduct business" to exclude business conducted by an entity in which Respondents "hold an ownership interest" of 5% or less, and Respondents participate in such business pertaining to anyone other than "the Tribe, Ute Energy LLC, the Ute Venture Fund Board, or the Ute Tribal Enterprises." Because the Agreement itself incorporates an ownership test, and does not flatly prohibit any and all direct or indirect activities, we conclude its

terms cannot be read as broadly as Claimant asserts. The Agreement's language allows Respondents to indirectly do what they cannot do directly by setting up an ownership structure that narrowly complies with the specific terms of the Agreement, but that is not prohibited by the Agreement.

Similarly, the alleged participation by Jurrius in the business conducted by non-owned entities such as 4X was also indirect through his interests in Indigena Holdings and Indigena Capital. Although he may have enjoyed some downstream benefit through ownership of parent organizations, we conclude that a breach of the Agreement requires more direct participation than ownership in a parent corporation and Claimants have cited no authority to the contrary. .

The Panel also concludes that the Denver meeting, did not violate the Agreement. Even if an initial discussion of a business proposal constitutes conducting business, this initial discussion did not occur on Tribal Territory.

For these reasons, the Panel grants summary judgment on Claim 4 in favor of Respondents.

CLAIM 5.

Claim 5 "asserts that Respondents, acting directly or indirectly through agents and associates, have violated Section 4(i) by entering 'Tribal Territory' as defined by the Settlement Agreement for purposes other than passing through to travel to a location other than within 'Tribal Territory.'"

Section 4(i) of the Settlement Agreement reads:

> (i) John P. Jurrius, for himself, and Robert E. Ogle, for himself, each agree that he will not for any purpose enter within the Ute Indian Tribal Territory as defined in subpart (f) of this

> Section without the express prior permission of. the Ute Tribal Business Committee or its designee. Notwithstanding anything to the contrary above, John P. Jurrius and Robert E. Ogle may travel on public highways that pass through such Tribal Territory for purposes of travel. to a location other than within the Tribal Territory;

Jurrius admits that in 2017 he traveled to Duchesne, Utah, to attend a meeting at the Duchesne County government office building regarding oil transportation issues. Jurrius argues that it did not occur to him that traveling to the county building was prohibited under the Agreement simply because Duchesne is within the 1861 boundaries of the reservation, and to interpret the Agreement to prohibit him from traveling to the seat off local government would violate public policy.

Claimant argues Tribal Territory as defined in the Agreement includes all lands within the exterior boundaries of the reservation, including within the City of Duchesne, and that the Tribe owns surface rights within the city. Claimant also argues Jurrius indirectly violated Section 4(i) through agents and associates, specifically 4X.

The Panel finds no material issues of fact with regard to Claim 5. Jurrius' actions are not disputed, nor is the fact Duchesne City lies within the exterior boundaries of the reservation. The Agreement defines Tribal Territory to include all lands located within the original boundaries, and Jurrius agreed he would "not for any purpose enter within the Ute Indian Tribal Territory" without permission. There is an exception for travel on public highways that pass through Tribal Territory for purposes of travel to a location other than within the Tribal Territory. Jurrius traveled over public highways, but his purpose was to travel to a location within Tribal Territory.

The Panel agrees with Respondents that it would violate public policy to prohibit

Jurrius from traveling to a county building to meet with government officials. The county is a unit of local government operating under state law, not just tribal laws. And the City Government is elected by the voting citizens of Duchesne. The roads through the City are either maintained by the Utah Department of Transportation or are United States highways. Given the overlapping sovereignties of state/county and tribal governments, tribal authority to exclude persons from county property is not as extensive as its authority over tribal property. We have noted the affidavits submitted by Claimants and the assertions that the entirety of Duchesne is on land owned by the Ute Indian Tribe. Assuming, without deciding, that the Tribe owns even the Utah Department of Transportation roads and highways and the public buildings in the City, the pleadings and affidavits before us are devoid of assertions of damages, even nominal damages. Consequently, we reject this assertion.

For these reasons, the Panel grants summary judgment on Claim 5 to Respondents.

CLAIM 6.

Claim 6 asserts "Respondents' actions and inactions violate the covenant of good faith and fair dealing under the parties' Settlement Agreement."

Respondents argue the covenant does not apply because the Agreement does not contain discretionary provisions and that Claim 6 is derivative of the other claims and cannot succeed as a stand-alone claim.

Claimant states there are disputes of fact that affect Claim 6.

The Panel agrees with Respondents. Having found no material issues of fact with regard to Claims 4 and 5, and having granted summary judgment on those claims to Respondents, the Panel also grants summary judgment on Claim 6 to Respondents.

CLAIM 7.

Claim 7 asserts "Respondent John Jurrius has organized a number of business entities to act as his alter ego. The business entities used as John Jurrius' alter ego include the Jurrius Group LLP, the Jurrius Ogle Group LLP, Native American Resource Partners LLC, and the various Indigena business entities named as Respondents in this case. On information and belief, Respondent Jurrius has used these alter ego entities to engage in violations of the parties' Settlement Agreement."

Respondents did not list Claim 7 in their motion for summary disposition, noting in their reply that Claim 7 was used to justify including the Indigena entities in the arbitration and when the panel dismissed the Indigena entities the claim necessarily went with them. Alternatively, to the extent Claim 7 was a claim against Jurrius, it duplicates Claim 4.

Claimant noted in its Response that Jurrius has never sought dismissal or summary disposition of Claim 7 and that the dismissal of the Indigena entities was specific only to those entities.

The Panel notes that Respondents' original Motion for Summary Disposition, filed April 2, 2021, sought '[d]ismissal on the merits of all claims asserted by the Tribe in arbitration." In none of the subsequent pleadings, or orders from the Panel, was Claim 7 ever mentioned as still outstanding. The Panel also notes that in Claimant's Prehearing Brief, filed on February 3, 2021, Claimant does not break out its arguments by claim numbers, but there does not appear to be any separate argument regarding an alter ego claim.

The Panel concludes that to the extent Claim 7 applies to Respondents, it

duplicates other claims that have been resolved by granting summary judgment to Respondents. Therefore, the Panel grants summary judgment on Claim 7 to Respondents.

Dated: June 1, 2021.

/Patrick Irvine/

Patrick Irvine
Arbitrator, for the Panel

18469338

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

LYNN D. BECKER, Plaintiff, v. UTE INDIAN TRIBE OF THE UINTAH & OURAY RESERVATION, a federally recognized Indian Tribe and a federally chartered corporation, the UINTAH AND OURAY TRIBAL BUSINESS COMMITTEE, and UTE ENERGY HOLDINGS LLC, a Delaware LLC, Defendants.	**ORDER** Case No. 2:16-cv-00958-TC District Judge Tena Campbell

On January 20, 2022, a mandate issued from the United States Court of Appeals for the Tenth Circuit. (ECF No. 293.) The Tenth Circuit remanded the case "with directions to DISMISS Becker's pending federal action without prejudice pursuant to the tribal exhaustion rule." Becker v. Ute Indian Tribe of Uintah & Ouray Rsrv., 11 F.4th 1140, 1150 (10th Cir. 2021).

There is still a pending motion for reconsideration here. (ECF No. 270.) United States District Judge Clark Waddoups, who previously presided over this case, ordered the Defendants ("Tribe") to pay Plaintiff Lynn D. Becker's and Movant John P. Jurrius's fees incurred in prosecuting an arbitration that the Tribe initiated. (ECF No. 260.) Mr. Becker and Mr. Jurrius each filed an attorneys' fees affidavit, in which they claim fees of $236,392.75 and $94,502.50, respectively. (ECF Nos. 262 & 263.) The Tribe objects to these sums. (ECF Nos. 273 & 274.) Mr. Jurrius concedes that his total should be reduced by $623.00 to $93,879.50. (ECF No. 280.)

Plaintiff Lynn D. Becker has also moved for a post-appeal status conference to "consider the steps that should be taken and the timing and order of those steps" following this mandate. (ECF No. 295.) He identifies two issues to be discussed. First is the pending motion for

reconsideration mentioned above, and second is the possibility that Mr. Becker will petition the Supreme Court of the United States for a writ of certiorari. Addressing the second issue first, the court sees no need to delay implementing the Tenth Circuit's mandate because of the chance for Supreme Court review. If the Court takes the case and reverses the Tenth Circuit's decision, the case may later be reopened.

Now, to the pending motion for reconsideration:

> Grounds warranting a motion to reconsider include (1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice. Thus, a motion for reconsideration is appropriate where the court has misapprehended the facts, a party's position, or the controlling law.

Servants of Paraclete v. Does, 204 F.3d 1005, 1012 (10th Cir. 2000) (citing Brumark Corp. v. Samson Res. Corp., 57 F.3d 941, 948 (10th Cir. 1995)). After reviewing Judge Waddoups's twenty-eight-page memorandum decision and order (ECF No. 260), the court is confident that Judge Waddoups did not misapprehend the facts, a party's position, or the controlling law. Nor has the Tribe shown "clear error" or "manifest injustice." Judge Waddoups's order was unequivocal: "[T]he Tribe's initiation of Arbitration against Jurrius was done in bad faith and was an abuse of process." (Mem. Decision & Order at 26, ECF No. 260.) The court sees no reason to second-guess the reasoning underlying these firm conclusions. After considering the Tribe's bad-faith, punitive tactics, Judge Waddoups properly exercised his discretion to award Mr. Becker and Mr. Jurrius their attorneys' fees.

Accordingly,

IT IS ORDERED that the Tribe's motion for reconsideration (ECF No. 270) is DENIED.

IT IS FURTHER ORDERED that the Tribe shall pay Mr. Becker $236,392.75 and Mr. Jurrius $93,879.50 in attorneys' fees as a sanction.

IT IS FURTHER ORDERED that Mr. Becker's motion for status conference (ECF No. 295) is DENIED.

IT IS FINALLY ORDERED that this action is DISMISSED WITHOUT PREJUDICE.

DATED this 28th day of January, 2022.

BY THE COURT:

Tena Campbell

TENA CAMPBELL
United States District Judge

AO 450 (Rev.5/85) Judgment in a Civil Case

United States District Court

District of Utah

LYNN D. BECKER,

Plaintiff,

v.

UTE INDIAN TRIBE OF THE UINTAH & OURAY RESERVATION, a federally recognized Indian Tribe and a federally chartered corporation, the UINTAH AND OURAY TRIBAL BUSINESS COMMITTEE, and UTE ENERGY HOLDINGS LLC, a Delaware LLC,

Defendants.

JUDGMENT IN A CIVIL CASE

Case Number: 2:16-cv-00958-TC

IT IS ORDERED AND ADJUDGED that pursuant to the mandate of the Tenth Circuit, the case is dismissed without prejudice. An award of attorneys' fees in the amount of $236,392.75 is awarded in favor of Lynn D. Becker and against the Ute Indian Tribe of the Uintah and Ouray Reservation, the Uintah and Ouray Tribal Business Committee, and Ute Energy Holdings, LLC. An award of attorneys' fees in the amount of $93,879.50 is awarded in favor of John P. Jurrius and against the Ute Indian Tribe of the Uintah and Ouray Reservation, the Uintah and Ouray Tribal Business Committee, and Ute Energy Holdings, LLC.

February 11, 2022

Date

BY THE COURT:

Tena Campbell

U.S. District Judge Tena Campbell

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

LYNN D. BECKER, Plaintiff, v. UTE INDIAN TRIBE OF THE UINTAH & OURAY RESERVATION, a federally recognized Indian Tribe and a federally chartered corporation, the UINTAH AND OURAY TRIBAL BUSINESS COMMITTEE, and UTE ENERGY HOLDINGS LLC, a Delaware LLC, Defendants.	**MEMORANDUM DECISION AND ORDER** Case No. 2:16-cv-00958-TC District Judge Tena Campbell

Following the Tenth Circuit's remand order in Becker v. Ute Indian Tribe of Uintah & Ouray Reservation (Becker III), 11 F.4th 1140 (10th Cir. 2021), the court denied the Tribe's motion to reconsider Judge Waddoups's sanctions order. (ECF No. 297.) With nothing left to do but implement the Tenth Circuit's mandate, the court dismissed the case without prejudice, entering a $330,272.25 sanctions judgment[1] against the Tribe. (Id.; ECF No. 300.) The Tribe quickly filed three postjudgment motions:

1. a motion to recover costs against Plaintiff Lynn D. Becker's two injunction bonds (ECF No. 302);
2. a Rule 59 motion to alter or amend judgment, or alternatively, a Rule 60 motion for relief from judgment (ECF No. 303); and

[1] Of this sum, Mr. Becker was awarded $236,392.75, and Movant John P. Jurrius was awarded $93,879.50. (ECF No. 300.)

3. a motion (a) for a stay pending a ruling on the Tribe's Rule 59 motion, (b) for a stay pending appeal, (c) to permit the Tribe to post alternative security, and (d) to offset the amount of security required by other cost awards (ECF No. 318).[2]

Then the Tribe filed a notice of appeal, which the Tenth Circuit abated pending the court's resolution of the Rule 59 motion. Becker v. Ute Indian Tribe of Uintah & Ouray Rsrv., No. 22-4022 (10th Cir. Mar. 31, 2022). The court has since granted the Tribe's unopposed motion to recover costs against Mr. Becker's injunction bonds, awarding the Tribe $20,000. (ECF No. 315.) For the following reasons, the court DENIES the Rule 59 motion and GRANTS the motion for stay.

I. Motion to Amend Judgment

The Tribe filed a "Rule 59 motion to alter or amend judgment, or alternatively, a Rule 60 motion for relief from judgment." (ECF No. 303.) It argues that the court "prematurely" entered judgment because the court did not wait for the Tribe's costs to be taxed by the Clerk of Court or for the costs to be taxed against the injunction bonds. Relief under Rule 59(e) is appropriate when "the court has misapprehended the facts, a party's position, or the controlling law." Nelson v. City of Albuquerque, 921 F.3d 925, 929 (10th Cir. 2019) (quoting Servants of Paraclete v. Does, 204 F.3d 1005, 1012 (10th Cir. 2000)). Similarly, relief under Rule 60(b)(1) requires showing that "the judge has made a substantive mistake of law or fact in the final judgment or order." Cashner v. Freedom Stores, Inc., 98 F.3d 572, 576 (10th Cir. 1996).

"A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree." 28 U.S.C. § 1920; see also DUCivR 54-2(c) ("Costs taxed by the clerk will be included

[2] The original motion to stay was at ECF No. 304, but the Tribe later filed an amended motion (ECF No. 318), relevant here.

in the judgment or decree."). Here, the Clerk of Court already included the Tribe's costs in the judgment. (See ECF No. 301 at 1 ("Total costs allowed for Defendants are $13,065.93 and are included in the Judgment.").) Even setting that aside, the court does not need to amend the judgment to include the already-taxed costs. Rule 54 draws "[a] sharp distinction between the judgment on the merits and an award of costs." Buchanan v. Stanships, Inc., 485 U.S. 265, 268 (1988). And Rule 58 instructs that "the entry of judgment may not be delayed . . . in order to tax costs or award fees." Fed. R. Civ. P. 58(e).

Simply put, "the entry of judgment and the taxation of costs are entirely separate legal acts," and "a motion for costs is not properly one to alter or amend the judgment under Rule 59(e)." 11 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2781 (3d ed.) (citing Md. Cas. Co. v. Jacobson, 37 F.R.D. 427, 430 (W.D. Mo. 1965)); 10 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2679 (4th ed.) (citing Samaad v. City of Dall., 922 F.2d 216 (5th Cir. 1991)). The court did not err by entering judgment before the Tribe's costs were taxed, so the Tribe has not shown its entitlement to relief under Rule 59 or Rule 60. For that reason, the court DENIES the Tribe's Rule 59 motion.

II. Motion for Stay Pending Appeal

The Tribe also filed a motion asking for four appeals-related reliefs. (ECF No. 318.) The Tribe is appealing Judge Waddoups's sanctions order (and this court's order affirming it), and it wants the court to stay this judgment pending appeal. Instead of posting a traditional supersedeas bond, the Tribe wants to use a litigation reserve fund to secure its obligation to pay the judgment. And it wants to setoff against the $330,272.25 judgment the $13,065.93 in costs taxed in this case, the $11,774.66 in costs taxed in the companion case (No. 2:16-cv-00579-TC),

an additional $2,028.00 in costs taxed in the companion case, and the $20,000.00 from the injunction bonds.[3]

To stay execution of a judgment, a party must "provid[e] a bond or other security." Fed R. Civ. P. 62(b). "[A] full supersedeas bond should be the requirement in normal circumstances," as it "secure[s] an appellee from loss resulting from the stay of execution." Mia. Int'l Realty Co. v. Paynter, 807 F.2d 871, 873 (10th Cir. 1986). District courts have discretion to set the bond amount or to waive the bond requirement altogether. Id. Because the court should presumptively require a bond equal to the full amount of the judgment, it is the Tribe's burden to establish good cause for not requiring a $330,272.25 bond. See Fox v. Pittsburg State Univ., 319 F.R.D. 342, 343 (D. Kan. 2017).

The Tribe, through the Uintah and Ouray Tribal Business Committee, passed a resolution approving a "Becker Litigation Reserve Fund." (Mot. Ex. A (Resolution 22-106), ECF No. 318-1.) This resolution authorized the Tribe's Comptroller, Skyler Massey, to invest $330,272.25 into a Federated Government Obligations Fund (ticker symbol GOIXX) held with KeyBank. (Mot. Ex. C (Massey Decl.), ECF No. 318-3.) Although the Tribe says that by establishing this fund it has "provid[ed] . . . other security," the funds are still under the Tribe's exclusive control. It is effectively asking that the court waive the bond requirement, rather than permit posting alternative security.

Courts commonly look to five factors in deciding whether to waive the supersedeas-bond requirement:

[3] Mr. Becker is solely liable for the $13,065.93 in costs taxed in this case, the $11,774.66 in costs taxed in the companion case, and the additional $2,028.00 in costs taxed in the companion case, which total $26,868.59. But the $20,000 payable against the injunction bonds is payable by Travelers Casualty and Surety Company of America and Hartford Fire Insurance Company, not Mr. Becker. (See Mem. Decision & Order at 4, ECF No. 315.) Any setoff can only reduce the Tribe's potential liability to Mr. Becker from $236,392.75 to $209,524.16.

> (1) the complexity of the collection process; (2) the amount of time required to obtain a judgment after it is affirmed on appeal; (3) the degree of confidence that the court has in the availability of funds to pay the judgment; (4) whether defendants' ability to pay the judgment is so plain that the cost of a bond would be a waste of money; and (5) whether defendants are in such a precarious financial situation that the requirement to post a bond would place other creditors of the defendant in an insecure position.

Fox, 319 F.R.D. at 343–44; see also Dillon v. City of Chi., 866 F.2d 902, 904–05 (7th Cir. 1988) (listing the same factors).

Here, factors (1) and (2) weigh in favor of the Tribe. The Tribe has earmarked the full judgment amount and has placed it into a litigation reserve fund, thereby simplifying the collection process and reducing the time needed to collect the judgment. See Dutton v. Johnson Cnty. Bd. of Cnty. Comm'rs, 884 F. Supp. 431, 435 (D. Kan. 1995) (waiving the bond requirement when Johnson County established a Risk Management Reserve Fund sufficient to cover the judgment). Factor (3) also weighs in favor of the Tribe. Not only have the funds already been deposited, but the court also finds credible Committee Chairman Shaun Chapoose's declaration testifying to the Tribe's financial ability. (Mot. Ex. D (Chapoose Decl.), ECF No. 318-4.) Factor (4) is inapplicable. While the court is satisfied with the steps the Tribe has taken to establish the litigation reserve fund, the Tribe's ability to pay is not "so plain." And because factor (5) is, in a way, the inverse of factor (3), it also weighs in favor of the Tribe. Beyond complaining about Mr. Jurrius's attempts to collect an earlier arbitration award, Mr. Becker and Mr. Jurrius do nothing to show that the Tribe's financial situation is otherwise "precarious."

Because the Tribe has shown its ability to pay the $330,272.25 judgment, the court will waive the formal bond requirement.[4] And because the Tribe is entitled to collect on three cost

[4] This waiver should not be construed by the Tribe as permission to liquidate the Becker Litigation Reserve Fund or to otherwise attempt to obstruct or impede any future collections efforts.

awards against Mr. Becker (totaling $26,868.59),[5] the court sees no reason why the Tribe cannot exercise its right of setoff and temporarily[6] reduce its liability to Mr. Becker from $236,392.75 to $209,524.16. Cf. Citizens Bank of Md. v. Strumpf, 516 U.S. 16, 18 (1995); Mass. Cas. Ins. Co. v. Forman, 600 F.2d 481, 485 (5th Cir. 1979).

CONCLUSION

The Tribe has not shown its entitlement to relief under Rule 59 or Rule 60, but it has shown that the Becker Litigation Reserve Fund satisfies Rule 62(b). Accordingly,

IT IS ORDERED that the Tribe's Rule 59 motion (ECF No. 303) is DENIED.

IT IS FURTHER ORDERED that the Tribe's motion for stay pending appeal (ECF No. 318) is GRANTED. The court accepts the Tribe's Becker Litigation Reserve Fund as sufficient security to stay the February 11, 2022 judgment, and the court permits the Tribe to temporarily setoff the $236,392.75 judgment by the allowable costs that Mr. Becker owes—$26,868.59.

IT IS FURTHER ORDERED that the Tribe shall maintain the Becker Litigation Reserve Fund until further order from the court.

IT IS FINALLY ORDERED that the court's February 11, 2022 judgment (ECF No. 300) is hereby STAYED pending appeal. (ECF No. 305.)

DATED this 4th day of May, 2022.

BY THE COURT:

Tena Campbell

TENA CAMPBELL
United States District Judge

[5] Again, the injunction bonds are payable by the two insurance companies, not Mr. Becker, so the court cannot credit the $20,000 against the amount the Tribe owes Mr. Becker.

[6] Because the sanctions order (and thereby the money judgment in Mr. Becker's favor) could be reversed on appeal, the Tribe does not ask for a permanent setoff.

FILED
United States Court of Appeals
Tenth Circuit

November 7, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

LYNN D. BECKER,

Plaintiff - Appellee,

v.

UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION, a federally recognized Indian Tribe and a federally chartered corporation, et al.,

Defendants - Appellants,

and

JOHN P. JURRIUS,

Movant - Appellee.

No. 22-4022
(D.C. No. 2:16-CV-00958-TC)
(D. Utah)

ORDER

Before **TYMKOVICH**, **KELLY**, and **EID**, Circuit Judges.

This matter is before the court on Appellants' *Motion for Stay of Mandate*. Upon consideration, the motion is denied.

Entered for the Court

CHRISTOPHER M. WOLPERT, Clerk

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT
Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257
(303) 844-3157
Clerk@ca10.uscourts.gov

Christopher M. Wolpert
Clerk of Court

Jane K. Castro
Chief Deputy Clerk

November 15, 2023

Gary P. Serdar
United States District Court for the District of Utah
351 South West Temple
Salt Lake City, UT 84101

RE: 22-4022, Becker v. Ute Indian Tribe of the Uintah and Ouray, et al
Dist/Ag docket: 2:16-CV-00958-TC

Dear Clerk:

Pursuant to Federal Rule of Appellate Procedure 41, the Tenth Circuit's mandate in the above-referenced appeal issued today. The court's August 8, 2023 judgment takes effect this date. With the issuance of this letter, jurisdiction is transferred back to the lower court/agency.

Please contact this office if you have questions.

Sincerely,

Christopher M. Wolpert
Clerk of Court

cc: Frances C. Bassett
David K. Isom
Rodney R. Parker
Jeremy Joseph Patterson
Thomasina Real Bird
Richard A. Van Wagoner

CMW/mlb

FILED
United States Court of Appeals
Tenth Circuit

August 8, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

LYNN D. BECKER,

Plaintiff - Appellee,

v.

UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION, a federally recognized Indian Tribe and a federally chartered corporation; UINTAH AND OURAY TRIBAL BUSINESS COMMITTEE; UTE ENERGY HOLDINGS, LLC, a Delaware LLC,

Defendants - Appellants,

and

JOHN P. JURRIUS,

Movant - Appellee.

No. 22-4022
(D.C. No. 2:16-CV-00958-TC)
(D. Utah)

ORDER AND JUDGMENT*

Before **TYMKOVICH**, **KELLY**, and **EID**, Circuit Judges.

Lynn Becker and the Ute Indian Tribe have been mired in litigation for over a decade. Mr. Becker's relationship with the Tribe began in 2004, when the Tribe

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

hired him to help market and develop its mineral resources. The Tribe hired Mr. Becker at the recommendation of John Jurrius, who then served as the Tribe's financial advisor. The relationship between the Tribe and both Mr. Jurrius and Mr. Becker eventually soured. According to the Tribe, the two men improperly ingratiated themselves with the Tribe to gain access to tribal assets. It subsequently sued them for, among other alleged wrongdoings, fraud.

The lawsuit resulted in a settlement agreement between Mr. Jurrius and the Tribe. As part of the settlement, Mr. Jurrius agreed that, should he become subject to a legal obligation to disclose tribal records or information produced in connection with his relationship to the Tribe, he would notify the Tribe and discuss good-faith ways to disclose that information. The settlement stipulated that the Tribe and Mr. Jurrius would resolve any controversy over disclosure through arbitration.

The relationship between Mr. Becker and the Tribe remained strained. The Tribe did not come to a similar agreement with him; its claims remain pending in Ute Indian Tribal Court. And in February 2013, Mr. Becker filed a complaint in federal district court against the Tribe alleging, among other things, breach of contract. Mr. Becker's lawsuit faced a series of setbacks across jurisdictions. Continuing litigation between the parties gave rise to the present lawsuit, wherein Mr. Becker sought to enjoin related tribal court proceedings.

To help resolve the new conflict, Mr. Becker subpoenaed Mr. Jurrius. Mr. Becker sought documents and testimony bearing on his independent contractor agreement with the Tribe. The Tribe claimed that Mr. Jurrius's settlement agreement

required him to consult with the Tribe before disclosing sensitive tribal documents. But the parties agreed to a process where Mr. Jurrius could produce documents and provide in-court testimony regarding the settlement agreement, with the Tribe retaining the right to object to the introduction of any disputed materials. Nonetheless, the Tribe initiated arbitration proceedings against Mr. Jurrius, contending he had violated the settlement agreement.

The district court viewed the arbitration as an attempt to frustrate the pending litigation between Mr. Becker and the Tribe by intimidating or punishing a witness—Mr. Jurrius—for complying with legal process—the subpoena. The court subsequently invoked its inherent sanctioning power to order the Tribe to pay the attorney fees Mr. Jurrius and Mr. Becker accumulated litigating proceedings related to the arbitration.

The Tribe appeals that sanction. We consider whether the court abused its discretion by sanctioning the Tribe and denying its motion to reconsider. We identify no erroneous legal or factual determinations underlying either order and affirm the district court.

I. Background

The relationship between Mr. Becker, Mr. Jurrius, and the Tribe spans two decades and three court systems. We have resolved various appeals implicating the parties. *Ute Indian Tribe of the Uintah & Ouray Rsrv. v. Lawrence*, 22 F.4th 892 (10th Cir. 2022); *Becker v. Ute Indian Tribe of Uintah & Ouray Rsrv.*, 11 F.4th 1140 (10th Cir. 2021); *Ute Indian Tribe v. Lawrence*, 875 F.3d 539 (10th Cir. 2017);

Becker v. Ute Indian Tribe of the Uintah & Ouray Rsrv., 868 F.3d 1199 (10th Cir. 2017); *Becker v. Ute Indian Tribe of the Uintah & Ouray Rsrv.*, 770 F.3d 944 (10th Cir. 2014). Those opinions ably recount the long history of litigation; we relay here only those facts relevant to the issues presented.

In short, in February 2013, Mr. Becker sued the Tribe for breach of contract. He sought unpaid fees under his independent contractor agreement with the Tribe. This lawsuit helped spark the chain of appeals cited above involving a range of federal court/tribal court jurisdictional matters. In July 2019, to help resolve some of the pending appeals, we ordered supplemental fact-finding to help us determine (1) where the parties executed the independent contractor agreement, (2) whether the parties to the agreement anticipated that either one would need to perform their duties outside Tribal lands, and (3) where the parties performed their contractual duties.

The district court set an evidentiary hearing for January 6 and 7, 2020 to resolve our questions. In anticipation of the hearing, Mr. Becker filed a notice of intent to serve a subpoena on Mr. Jurrius's attorneys. He sought document production, including materials from Mr. Jurrius's settlement agreement. The Tribe instructed Mr. Jurrius not to produce protected documents without its approval, citing the terms of the arbitration agreement, which reads in relevant part:

> The Parties agree that the terms of this Agreement are strictly confidential, and that neither Party shall disclose this Agreement or its terms to any other person or entity. *If either Party becomes subject to any legal obligation to disclose the existence of the Agreement or its terms*, that Party shall, if lawfully permitted to do so and before making any disclosure, promptly notify the other of the

> fact and the Parties shall promptly discuss in good faith ways in which the Parties can reasonably comply with both the obligation to disclose and the obligations of confidentiality in this Agreement . . . .

App. 1960–61 (emphasis added).

Before the hearing, the Tribe and Mr. Becker came to an agreement: Mr. Jurrius could produce the documents to Mr. Becker's counsel, who would then forward them to the Tribe. Mr. Becker could use the documents unless the Tribe timely objected to them.

At the evidentiary hearing, Mr. Jurrius's counsel expressed concern that the Tribe might retaliate against Mr. Jurrius for testifying. To address this concern, the court invited the Tribe to object to Mr. Jurrius's testimony if it feared prejudicial testimony involving the settlement agreement. During the course of the hearing, the Tribe made several objections on confidentiality grounds; the court overruled each one.

One week after the evidentiary hearing, the Tribe notified Mr. Jurrius that it intended to initiate arbitration. It cited his violation of the settlement agreement's confidentiality requirement, specifically flagging his production of internal tribal documents without disclosing his legal obligation to the Tribe. App. 924. It also alleged past violations of the agreement unrelated to the confidentiality requirement—violations that had occurred over two-and-a-half years earlier. App. 925.

Mr. Becker learned that the Tribe planned to subpoena documents from him and his counsel to aid in the arbitration. In response, Mr. Becker subpoenaed Mr. Jurrius's counsel, seeking evidence that would reveal the extent to which the arbitration related to Mr. Jurrius's participation in the Becker matter. The Tribe moved to quash the subpoena. The court held a hearing on the motion to quash and instructed the Tribe to submit the settlement agreement and its arbitration claims for *in camera* review.

Four days later, the court *sua sponte* ordered the Tribe to show cause (1) why the settlement agreement and arbitration filings should not be made public, and (2) why the Tribe should not be sanctioned for bad-faith abuse of the judicial process by initiating the arbitration proceedings. The court ultimately concluded that the Tribe initiated the arbitration in bad faith after walking through each claim leveled by the Tribe in the arbitration and finding each meritless. It determined that the Tribe intended to either punish Mr. Jurrius for his participation in the evidentiary hearing or intimidate him from testifying in future proceedings. And it invoked its inherent sanctioning power to order the Tribe to pay Mr. Becker and Mr. Jurrius's attorney fees related to the resolution of the issue. This amount would ultimately total $330,272.25.

After the court imposed sanctions, the arbitration panel issued its findings. The panel found that Mr. Jurrius had not violated the settlement agreement by participating in the hearing, citing the agreed-upon procedures between the Tribe and Mr. Becker for handling Mr. Jurrius's documents. App. 2637–38. For the arbitration

panel, it was immaterial that Mr. Jurrius had not taken the first step of alerting the Tribe to his legal obligation. The Tribe ultimately received notice and knowledge of the production and testimony and was given the opportunity to object. The panel either resolved the remaining claims in favor of Mr. Jurrius or kicked them back to the parties for further briefing.

The Tribe petitioned the district court for reconsideration of its judgment in light of the arbitration panel's decision, arguing that the panel did not find all of the claims meritless, which undermined the court's bad-faith finding. But after the Tribe filed its motion, the mandate from one of our earlier decisions issued, requiring the dismissal of the underlying case. The next day, the district court judge recused himself from the proceedings. One week later a substitute district court judge considered the motion and summarily determined that there were no grounds warranting a motion to reconsider, declining to "second-guess the reasoning underlying the district court's firm conclusions." *Becker v. Ute Indian Tribe of Uintah & Ouray Rsrv.*, No. 2:16-CV-00958-TC, 2022 WL 794986, at *1 (D. Utah Jan. 28, 2022).

The Tribe appeals the attorney fees award and the denial of its motion to reconsider.

II. Analysis

The Tribe mounts four key objections to the district court's sanction award: (1) the court lacked jurisdiction to sanction the Tribe, (2) the court did not provide the Tribe with protections required by due process, (3) the court relied upon unsupported

factual findings, and (4) the court failed to tie the attorney fees to the harm the Tribe allegedly caused. Finally, the Tribe claims (5) the district court abused its discretion by denying the Tribe's motion for reconsideration.

A. Sanctions

The Tribe first argues the district court improperly awarded attorney fees. It alleges both legal errors and erroneous factual findings. "We review a court's imposition of sanctions under its inherent power for abuse of discretion. An abuse of discretion occurs when the district court bases its ruling on an erroneous conclusion of law or relies on clearly erroneous fact findings." *Xyngular v. Schenkel*, 890 F.3d 868, 872 (10th Cir. 2018) (internal citations and quotation marks omitted).

1. Jurisdiction on Remand

The Tribe argues the district court acted outside its authority by sanctioning the Tribe under its inherent power. And if the court acted outside its authority, it committed a legal error that would render its imposition of sanctions an abuse of discretion.

Federal courts possess the inherent power to manage proceedings before them and sanction conduct that undermines those proceedings. "Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum, in their presence, and submission to their lawful mandates . . . ." *Anderson v. Dunn*, 19 U.S. 204, 227 (1821). Inherent power is "governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of

cases." *Link v. Wabash R. Co.*, 370 U.S. 626, 630–31 (1962). Accordingly, district courts can investigate and sanction conduct that is "intended to improperly influence the judicial process." *Xyngular*, 890 F.3d at 873. We have recognized that this power extends so far as to justify sanctioning disruptive *pre*-litigation conduct. *Id.*

The district court's sanction proceedings fit within the well-established inherent power framework. Mr. Becker subpoenaed Mr. Jurrius for information that would help the court "achieve the orderly and expeditious" resolution of our remand order. *Link*, 370 U.S. at 631. In response, the Tribe initiated arbitration proceedings against Mr. Jurrius. While the arbitration proceedings would not take place before the district court, the district court suspected that the proceedings were initiated to "delay[] or disrupt[] the litigation" before it by intimidating or punishing Mr. Jurrius. *Hutto v. Finney*, 437 U.S. 678, 689 n.14 (1978); *cf. Chambers v. NASCO, Inc.*, 501 U.S. 32, 57 (1991) ("[A] party may be sanctioned for abuses of process occurring beyond the courtroom, such as disobeying the court's orders."). That brought the matter squarely within the court's jurisdiction, which extends to the investigation of conduct "intended to improperly influence the judicial process." *Xyngular*, 890 F.3d at 873.

The Tribe, however, argues the district court stepped outside its jurisdiction in three crucial ways. The Tribe first claims that the court unlawfully penalized conduct that took place in connection with an arbitration rather than litigation before the court. It primarily relies on *Positive Software Solutions, Inc. v. New Century Mortgage Corp.*, in which the Fifth Circuit found that a district court lacked inherent

power to sanction a party for her conduct during arbitration proceedings. 619 F.3d 458, 463 (5th Cir. 2010).

To be sure, the Fifth Circuit warned against courts acting as "roving commission[s] to supervise a private method of dispute resolution." *Id.* at 462. But in that case, "the sanctioned conduct took place in connection with the arbitration, not in connection with discovery under the Court's supervision." *Id.* at 461 (internal quotation marks omitted). And in the Fifth Circuit—like the Tenth—a court can only exercise its inherent sanctioning power over conduct in "collateral proceedings that . . . threaten the court's own judicial authority or proceedings." *Id.* at 460–61. *Positive Software Solutions* is therefore unlike this case, where the district court found that the collateral proceeding—the arbitration—threatened the court's own proceedings because the Tribe intended to use the arbitration to intimidate a potential future witness.

The Tribe next claims that the district court acted outside its jurisdiction by adjudicating the "merits" of the arbitration claims. To be sure, the court could not wrest authority to resolve the claims from the arbitration panel. But the court did not do so, nor did it claim to. Instead, the court considered whether the Tribe initiated the arbitration to *intimidate or punish* Mr. Jurrius for his participation before the district court. It evaluated the legal merit of the claims under the theory that, if the claims were frivolous, the Tribe might have brought the suit for an inappropriate reason. The court's analysis formed an important part of its ultimate decision to invoke its inherent sanctioning power.

The Tribe also argues that the limited authority we granted the court on remand did not permit it to facilitate its bad-faith sanctioning proceedings. The court concededly enjoyed only limited authority on remand. We expressly limited its jurisdiction to finding facts important to our resolution of the appeals. App. 2575; *cf. Texaco, Inc. v. Hale*, 81 F.3d 934, 937 (10th Cir. 1996) ("We start from the premise that the scope of the district court's jurisdiction was narrow following remand."). But a limited remand does not extinguish a court's inherent power to "achieve the orderly and expeditious disposition of cases," *Link*, 370 U.S. at 631, or sanction actions that "impugn the district court's integrity," *United States v. Kouri-Perez*, 187 F.3d 1, 7 (1st Cir. 1999). In other words, nothing about the limited nature of a remand limits the court's ability to police activity arising from that remand.[1]

We are satisfied that the district court did not misapprehend its authority.[2]

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[1] We disagree with the dissent's contention that the remanding circuit court panel needed to vest the district court with authority to exercise its inherent power. A court's inherent power is just that: inherent. *See Chambers*, 501 U.S. at 43 ("It has long been understood that certain implied powers must necessarily result to our Courts of justice from the nature of their institution, powers which cannot be dispensed with in a Court, because they are necessary to the exercise of all others." (internal quotation marks omitted)). While our limited remand order refined the district court's task, it did not extinguish the court's ability to protect the integrity of its own proceedings; to hold otherwise would create a strange rule welcoming bad behavior from parties whenever a remand order does not plainly empower a court to police that behavior. This conclusion does not unsettle or expand our approach to a court's inherent power. We have consistently recognized its reach and have never suggested that another court can extinguish its force. *See, e.g., United States v. Akers* (10th Cir. 2023), No. 21-3226, draft at 14–18.

[2] The Tribe also argues that, because the court acted outside its scope of authority, it unlawfully denied the Tribe's motion to quash Mr. Becker's subpoena and improperly made the settlement agreement public. Because the remand order did not

2. Procedural Protections

The Tribe also argues that the sanction—attorney fees—constituted what amounts to a criminal sanction, and that the court did not provide the procedural guardrails required for the sanction's imposition. And because the court misapprehended the process it owed the Tribe, it committed a legal error giving rise to an abuse of discretion.

The Supreme Court has established that fee awards which "redress the wronged party for losses sustained"—*i.e.*, are compensatory rather than punitive—need only follow "civil procedures." *Goodyear Tire & Rubber Co. v. Haeger*, 581 U.S. 101, 108 (2017) (internal quotation marks omitted); *see also Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 827 (1994) ("[C]ivil contempt sanctions . . . may be imposed in an ordinary civil proceeding upon notice and an opportunity to be heard."). But a court can only issue awards which "impose an additional amount as punishment for the sanctioned party's misbehavior" pursuant to "procedural guarantees applicable in criminal cases," like findings of fact beyond a reasonable doubt. *Goodyear*, 581 U.S. at 108.

We have previously articulated the procedural requirements for imposing civil penalties. "[T]he basic requirements of due process with respect to the assessment of costs, expenses, or attorney's fees are notice that such sanctions are being considered

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preclude the district court from invoking its inherent power to investigate and sanction bad-faith abuse of the judicial process before it, the district court did not exceed its jurisdiction by facilitating the subpoena and docketing the settlement agreement as regular incidents to litigation.

by the court and a subsequent opportunity to respond." *Dominion Video Satellite, Inc. v. Echostar Satellite, L.L.C.*, 430 F.3d 1269, 1279 (10th Cir. 2005) (quoting *Braley v. Campbell*, 832 F.2d 1504, 1514 (10th Cir. 1987)). And where, as here, "the court intends to consider such sanctions sua sponte, due process is satisfied by issuance of an order to show cause why a sanction should not be imposed and by providing a reasonable opportunity for filing a response." *Campbell*, 832 F.2d at 1515.

The court provided the requisite process. First, the court imposed civil, not criminal, sanctions. The court limited the penalty to payment for "the fees that Becker and Jurrius incurred in prosecut[ing]" the Tribe's initiation of arbitration against Jurrius. App. 1911. The court instructed Mr. Becker and Mr. Jurrius to report fees accrued in connection with specified motions and hearings, and even stopped short of requiring compensation for activity before the arbitration panel itself. In short, the sanction went "no further than to redress the wronged part[ies] for losses sustained" and did not "impose an additional amount as punishment for the sanctioned party's misbehavior." *Goodyear*, 581 U.S. at 108 (internal quotation marks omitted).

Second, the court afforded the protections required for imposing civil penalties: notice and an opportunity to respond. The Tribe objects that the court should have granted a hearing on a piece of evidence the Tribe submitted—an affidavit contending that the Tribe only had legitimate intentions in initiating arbitration—because it appears the court disregarded or discounted it by not

addressing it in its sanctioning order. We are aware of no authority that suggests a district court must hold special hearings on pieces of evidence that it does not weigh as strongly as a party would like.[3]

The Tribe also objects that the court did not provide notice that it planned to consider the merits of the arbitration complaint. If it had known as much, it would have provided more or different evidence. But the court plainly explained that it wanted to determine whether the Tribe initiated the arbitration in "bad-faith." App. 318. The Tribe rightfully suspected that the merits of its claims would be under some scrutiny, because it led its response to the court with the header, "The Court Should Not Sanction the Tribe Because it Initiated the Arbitration . . . To Pursue Legitimate Claims." App. 329. The court not only signaled its interest in the legitimacy of the arbitration claims—the Tribe raised the issue itself.

The court provided the Tribe all the process required: notice and an opportunity to be heard.

[3] The Tribe cites to *Wilkerson v. Siegfried Ins. Agency, Inc.*, 621 F.2d 1042 (10th Cir. 1980), for the proposition that it is entitled to an evidentiary hearing on the contents of the affidavit. *Wilkerson* was an age discrimination case, wherein we were confronted with an issue on the availability of equitable tolling. In that "particular matter," we decided the question "could not be resolved by summary judgment, and that its resolution require[d] an evidentiary hearing" because of the extent to which the legal question "invariably involve[d] the credibility of the various witnesses," which "is difficult to determine from affidavits, or depositions." *Id.* at 1045. That case does not control here, and at any rate, the district court was well placed to discern the motives of the parties.

3. Findings of Fact

The district court's sanctions hinged on its finding that the Tribe intended to abuse or improperly influence the judicial process. The Tribe argues that the court's finding was clearly erroneous.

We review a district court's finding of fact for clear error. That review is colored by the standard that guided the court's inquiry below. We lack precedent establishing the standard of proof required by a fee-shifting sanction leveled under a court's inherent power. But in the past we have required clear-and-convincing evidence that a litigant acted in bad faith to support a dismissal sanction. *Xyngular*, 890 F.3d at 873–74; *see also FTC v. Kuykendall*, 371 F.3d 745, 754 (10th Cir. 2004) (applying the clear-and-convincing-evidence standard for proof of contempt of court in connection with civil contempt sanctions). And other circuits require district courts to find evidence of bad-faith abuse of the judicial process by clear-and-convincing evidence. *See, e.g.*, *Yukos Cap. S.A.R.L. v. Feldman*, 977 F.3d 216, 235 (2d Cir. 2020). We see no reason why that standard should not apply here.

The clear-and-convincing-evidence standard requires that "evidence places in the ultimate factfinder an abiding conviction that the truth of its factual contentions are highly probable." *United States v. Valenzuela-Puentes*, 479 F.3d 1220, 1228 (10th Cir. 2007) (internal quotation marks omitted). Our clear error review thus requires us to ask whether we are firmly convinced that the district court erred in finding that it was highly probable the Tribe acted in bad faith. *See Koszola v. F.D.I.C.*, 393 F.3d 1294, 1300 (D.C. Cir. 2005).

At the outset, we find it legally proper to equate witness intimidation with bad-faith abuse of the judicial process. The court's inherent power to sanction abuse of the judicial process is justified by a court's interest in "manag[ing] [its] own affairs so as to achieve the orderly and expeditious disposition of cases." *Chambers*, 501 U.S. at 43 (quoting *Link*, 370 U.S. at 630–31). Intimidating a potential future witness surely implicates the expeditious resolution of cases. *Cf. Thomas v. Tenneco Packaging Co., Inc.*, 293 F.3d 1306, 1328 (11th Cir. 2002) (finding sanctions under the district court's inherent power supported by the filing of documents "containing remarks that served no purpose other than to harass and intimidate opposing counsel").

The Tribe objects to the conclusion it knew Mr. Jurrius could appear as a witness before the court in future proceedings. *See generally* Appellants' Motion for Judicial Notice, *Becker v. Ute Indian Tribe of the Uintah and Ouray, et al.*, No. 22-4022 (10th Cir.), ECF #10971475 (filed Jan. 24, 2023).[4] If the Tribe knew that Mr. Jurrius would *not* appear before the court again, a witness intimidation theory could not support sanctions. In its motion, the Tribe primarily highlights prior tribal court legal findings that it says proves Mr. Becker's independent contractor agreement is unenforceable. Because of this finding, the logic goes, Mr. Jurrius will have no role in resolving issues arising from Mr. Becker's agreement.

[4] We grant the Tribe's motion for judicial notice.

That is neither here nor there. At the time the Tribe initiated arbitration proceedings—January 27, 2020—the specter of future litigation on remand loomed over the district court. Indeed, two relevant appeals were not resolved until August 3, 2021, *Becker*, 11 F.4th 1140, and another was not resolved until January 6, 2022, *Lawrence*, 22 F.4th 892. As it turns out, neither party would need to call Mr. Jurrius before the District of Utah following the resolution of either appeal. But particularly given the multiplicative quality of the litigation between the parties, had we ordered more factual findings or resolved the issues in a different way, Mr. Jurrius's participation might well have been required.[5] We detect no conceptual or logical problem with the court's theory that the Tribe intended to chill Mr. Jurrius's participation in potential future proceedings.

The district court's finding that the Tribe acted in bad faith to influence the judicial process revolved around four observations. *First*, it found that the arbitration claims leveled against Mr. Jurrius were frivolous. *Second*, it found that the claims were not only frivolous, but misrepresented the terms of the settlement agreement. *Third*, the Tribe initiated the arbitration right after the evidentiary hearing and initially sought $2.5 million in damages, giving the arbitration a retaliatory gloss.

[5] For example, in *Becker*, we ultimately held that the tribal exhaustion rule required the District of Utah to dismiss Mr. Becker's action without prejudice for resolution by the tribal court. 11 F.4th 1140, 1150. But had we agreed with Mr. Becker that the district court properly precluded the tribal court's orders from having preclusive effect and properly enjoined tribal court proceedings, it is possible that Mr. Jurrius's testimony would have been implicated as the district court untangled other issues surrounding Mr. Becker's contract.

And *fourth*, the Tribe amended its complaint to soften and focus its language after the bad-faith show cause order was issued.

To the above observations, we add one more. *Fifth*, the Tribe slept on the lion's share of its arbitration claims for almost two years before bringing them alongside the claims connected to Mr. Jurrius's participation in the evidentiary hearing, suggesting that the Tribe only found interest in bringing the action when it wanted to intimidate Mr. Jurrius.

The district court concluded that the only reason for the Tribe to act in bad faith was to "punish Jurrius for testifying against it and/or to discourage him from testifying in future proceedings in this matter." App. 1910.

To be sure, some of the proceedings are equivocal. For example, Mr. Jurrius failed to abide by the precise procedural mechanisms outlined in the settlement agreement. He did not initially contact the Tribe when subjected to the subpoena, although that problem was eventually resolved. It is also true the arbitration panel might have found that he did not violate the agreement because the Tribe seemingly waived the procedural requirement by agreeing to alternative terms with Mr. Becker's counsel. And we bear in mind the Tribe's contractual and constitutional interests in seeking redress—buttressed by the public policy preference for resolving conflict through arbitration—hanging in the background.

But we review for clear error, not de novo. While we may not be convinced that the bad-faith finding was established by clear-and-convincing evidence on de

novo review, we are also not firmly convinced that the district court was wrong to find as much.

The Tribe resists this conclusion by pointing to several of our cases. For example, they cite to our unpublished decision in *Martin for Estate of Martin v. Greisman*, 754 F. App'x 708 (10th Cir. 2018). In that case, we assessed a district court's invocation of inherent authority to sanction an attorney for bringing a frivolous lawsuit. The Tribe claims the case stands for the proposition that "lack of evidence for a claim does not establish bad faith." Aplt. Br. at 42. In fact, *Greisman* held that lack of evidence, "without more, doesn't establish that counsel brought the claim in bad faith." 754 F. App'x at 713 (citing *Mt. W. Mines, Inc. v. Cleveland-Cliffs Iron Co.*, 470 F.3d 947, 954 (10th Cir. 2006)). The court here did not rely solely on the arbitration claims' frivolousness to impose sanctions; instead, it inferred bad-faith from additional elements, like *when* the Tribe filed its arbitration claims.[6]

The Tribe also argues that the district court relied on "inadmissible" evidence in its bad-faith finding, violating its due process rights. Aplt. Br. at 43. It complains that the district court relied on "statements of counsel in lieu of admissible evidence; purported anonymous statements; hearsay-upon-hearsay and inadmissible lay opinions." *Id.*

[6] For this reason, the Tribe's additional cases also fail to persuade us. *See, e.g., Ctr. For Legal Advocacy v. Earnest*, 89 F. App'x 192, 194 (10th Cir. 2004) (holding that it is not enough to merely "believe" that an adverse litigant's position is unsupported by law to warrant sanctions); *Burkhart v. Kinsley Bank*, 852 F.2d 512, 514–15 (10th Cir. 1988) (holding that Rule 11 sanctions were properly denied where counsel allegedly lacked *only* an argument supported by existing law).

The Tribe cites little to no authority for its argument. Flatly declaring that the court relied on "inadmissible" evidence and gesturing to the whole of the sanction proceedings, without reference to or analysis of the relevant rules, falls short of a meaningful challenge. *See* Fed. R. App. P. 28(a)(8)(A) ("The appellant's . . . argument . . . must contain[] appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies"). That is enough to reject the Tribe's challenge, but we note that the weight of precedent cuts against its argument, too. *See, e.g.*, *Jensen v. Phillips Screw Co.*, 546 F.3d 59, 66 n.5 ("We do not suggest that the rules of evidence necessarily apply to factfinding in the context of sanctions. That is not the case."); *Cook v. American S.S. Co.*, 134 F.3d 771, 775 (6th Cir. 1998) (finding the argument that a court violates due process by failing to apply the Federal Rules of Evidence when imposing sanctions without merit).

The district court—a witness to both parties' interactions—was well situated to weigh the relevant facts. It did not clearly err by finding that the timing and substance of the arbitration claims added up to a bad-faith attempt to intimidate Mr. Jurrius from participating in future proceedings.

4. Attorney Fees Award

Finally, the Tribe argues that the district court abused its discretion by (1) awarding attorney fees unconnected to the harm the Tribe caused and (2) declining to require Mr. Becker and Mr. Jurrius to produce their attorney retainer agreements.

First, the Tribe mounts a legal argument: there needs to be a causal connection between the alleged bad-faith act and the damages, and there is no evidence that the arbitration affected Mr. Jurrius's document production or testimony.

Compensatory damages must "track[] the loss resulting from" the sanctioned wrong. *Goodyear*, 581 U.S. at 108. But that does not mean the damages must reflect the harm the offending party allegedly intended to cause. Indeed, a party is not relieved from sanctions just because it was unsuccessful in undermining the judicial process: we ask whether a party "intended" to abuse the judicial process. *Xyngular*, 890 F3d at 868; *see Enmon v. Prospect Capital Corp.*, 675 F.3d 138, 145 (2d Cir. 2012) (holding that "sanctions may be warranted even where bad-faith conduct does not disrupt the litigation before the sanctioning court," and focusing instead on the purpose behind the activities).

Furthermore, the Supreme Court has expressly permitted an award of attorney fees following a bad-faith finding tethered to the "portion of [a party's] fees that [the party] would not have paid but for the misconduct." *Goodyear*, 581 U.S. at 109 (internal quotation marks omitted). The district court tied the attorney fees to motions practice that would not have occurred but for the arbitration. It listed the motions and hearings related to the arbitration and required the Tribe to pay those fees. The court did not need to find that the arbitration succeeded in intimidating Mr.

Jurrius and tie the damages to Mr. Jurrius's absence or hesitancy to participate in future proceedings.[7]

Second, the Tribe claims the district court abused its discretion by denying the Tribe's Rule 54(d)(2)(B)(iv) motion to compel Mr. Becker and Mr. Jurrius to produce their attorney retainer agreements. The Tribe explains that they were interested in the retainer agreements because of the disparity in fee amounts requested by the two, the significant fees Mr. Becker claimed for non-lawyer time, the high hourly rates, and the suspicion that Mr. Becker and Mr. Jurrius had contingent fee arrangements with their lawyers.

Under the Federal Rules of Civil Procedure, a motion for attorney fees must "disclose, *if the court so orders*, the terms of any agreement about fees for the services for which the claim is made." Fed. R. Civ. P. 54(d)(2)(B)(iv) (emphasis supplied). The district court denied the Tribe's motion to require production of attorney retainer agreements for Mr. Becker and Mr. Jurrius, reasoning that "[t]he

[7] Relatedly, the Tribe argues that Rule 54(d)(2)(C) of the Federal Rules of Civil Procedure required the district court to make findings of fact and conclusions of law to accompany its attorney fees award, and that it failed to do so. The Rule sets out: "Subject to Rule 23(h), the court must, on a party's request, give an opportunity for adversary submissions on the motion in accordance with Rule 43(c) or 78. The court may decide issues of liability for fees before receiving submissions on the value of services. The court must find the facts and state its conclusions of law as provided in Rule 52(a)." Fed. R. Civ. P. 54(d)(2)(C). In relation to this rule, the Tribe claims "there is no evidence—and no finding by the district court," that the Tribe's conduct impacted the remand litigation or harmed Mr. Becker or Mr. Jurrius. Aplt. Br. at 45–46. But as explained, the district court found that the Tribe abused the judicial process in bad faith and tied damages to motions practice stemming from that abuse. The Tribe does not explain how, or cite any cases suggesting, that these findings ran afoul of Rule 54(d)(2)(C).

Tribe has not showed good cause for its request, as the attorney fee statements filed by Becker and Jurrius contain and reflect the actual amounts charged in this matter." App. 2043. Rule 54 lodges discretion firmly with the district court judge, and the Tribe cites no case law and develops no argument establishing that the court's reasoning was flawed or otherwise insufficient.

We find no legal errors and no clearly erroneous factual findings underpinning the fee-shifting award. The district court did not abuse its discretion.[8]

B. Motion for Reconsideration

In district court, the Tribe also moved for reconsideration of the sanction order, alleging (1) lack of jurisdiction over the substantive merits of the Tribe's arbitration claims, (2) that the arbitration panel rulings contradicted the court's determination that the claims were meritless, and (3) that the court deprived the Tribe of due process by denying it an opportunity to present arbitration evidence and failing to provide an evidentiary hearing on a supportive affidavit submitted by the Tribe.

[8] The Tribe also asserts that "the district court failed to provide due process, or even to exercise judicial discretion, in determining the amount of the sanctions imposed, the court simply granting Messrs. Becker and Jurrius the full amount each requested, with no review for reasonableness or a causal link to the alleged bad-faith conduct." Aplt. Br. at 22–23. We cannot agree that the court failed to exercise judicial discretion. At the outset, the court was permitted to "decide issues of liability for fees before receiving submissions on the value of services." Fed. R. Civ. P. 54(d)(2)(c). Even so, the district court plainly reviewed the briefing on attorney fees, as it cited to and recounted the attorney fees affidavits, the Tribe's objections, and Mr. Jurrius's concessions to the Tribe's objections. App. 2474. While the district court's order was short, the Tribe cites to no authority holding that it amounted to a denial of due process or a total absence of discretion.

We review denials of motions to reconsider for abuse of discretion. "Abuse of discretion requires arbitrary, capricious, whimsical or manifestly unreasonable judgment." *United States v. Maldonado-Passage*, 56 F.4th 830, 837 (10th Cir. 2022) (internal quotation marks omitted). "Grounds for reconsideration include changes in controlling law; new, previously unavailable evidence; and clear error or manifest injustice." *Id.*

Strictly speaking, the federal rules do not recognize a "motion to reconsider." *Price v. Philpot*, 420 F.3d 1158, 1167 n.9 (10th Cir. 2005). Because the motion was filed within twenty-eight days of the district court's entry of judgment, we treat it as a Rule 59(e) motion to alter or amend the judgment. And a Rule 59(e) motion "should be granted only to correct manifest errors of law or to present newly discovered evidence." *Phelps v. Hamilton*, 122 F.3d 1309, 1324 (10th Cir. 1997) (internal quotation marks omitted).

The district court did not abuse its discretion by denying the Rule 59(e) motion. As discussed above, the Tribe's first and third objections lack merit. And the arbitration panel's decision did not constitute "newly discovered evidence," nor did it demonstrate that "manifest injustice" had occurred. The arbitration panel's willingness to entertain the Tribe's claims suggested only that another authority might disagree with some of the court's analysis. That does not rise to the exceptional circumstances required to support a Rule 59(e) motion.

Nor did the district court abuse its discretion by failing to exercise discretion by resolving the motion with a short order. The Tribe complains that the court

offered too cursory an explanation of its denial. But courts are not required to march through each argument presented in detail. It was enough for the court to conclude that it had "not misapprehended the facts, a party's position, or the controlling law," "[n]or ha[d] the Tribe shown 'clear error' or 'manifest injustice.'" App. 2475.

III. Conclusion

We affirm the district court.

Entered for the Court

Timothy M. Tymkovich
Circuit Judge

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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

LYNN D. BECKER, Plaintiff, vs. UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION, *et al.*, Defendants, Counterclaim and Third-Party Plaintiffs, vs. LYNN D. BECKER, *et al.*, Counterclaim and Third-Party Defendants.	**MOTION TO RELEASE FUNDS** Case No. 2:16-cv-958-TC Judge Tena Campbell

Pursuant to this court's May 4, 2022 Memorandum Decision and Order (ECF 325), John P. Jurrius, joined by Mr. Becker, moves the court for an order releasing the funds in

the Becker Litigation Reserve Fund to him and Mr. Becker in order to satisfy the Judgment (ECF 300) in this case. The Judgment, entered February 11, 2022, awards $236,392.75 to Mr. Becker and $93,879.50 to Mr. Jurrius. The court's Memorandum Decision and Order allows the Tribe to offset a $26,868.59 cost award against Mr. Becker's judgment, leaving a net judgment in his favor of $209,524.16. The judgments are accruing interest at the applicable federal post-judgment rate of 0.98 percent.

The court entered the May 4, 2022 Order in response to the Tribe's request for a stay pending appeal. The Tribe created the Becker Litigation Reserve Fund as a substitute for a supersedeas bond to secure payment of the judgment. The Order provides in pertinent part:

> IT IS [] ORDERED that the Tribe's motion for stay pending appeal (ECF No. 318) is GRANTED. The court accepts the Tribe's Becker Litigation Reserve Fund as sufficient security to stay the February 11, 2022 judgment, and the court permits the Tribe to temporarily setoff the $236,392.75 judgment by the allowable costs that Mr. Becker owes—$26,868.59.
>
> IT IS FURTHER ORDERED that the Tribe shall maintain the Becker Litigation Reserve Fund until further order from the court.
>
> IT IS FINALLY ORDERED that the court's February 11, 2022 judgment (ECF No. 300) is hereby STAYED pending appeal. (ECF No. 305.)

The Tenth Circuit affirmed this court's Judgment on August 8, 2023. The Tribe sought rehearing, which was denied October 27, 2023. The Tribe then asked the Tenth Circuit for an order staying the mandate. That court denied the motion for stay on November 7, 2023. The mandate issued November 15, 2023 (ECF 330).

Despite the conclusion of the appeal, the Tribe refuses to consent to the release of money from the Becker Litigation Reserve Fund to pay the Judgment. It has taken the position that it intends to petition the U.S. Supreme Court for a writ of certiorari and that

this court's stay extends to such a petition. To date, the Tribe has neither filed a petition nor sought a stay from the Supreme Court.

The Tribe's position that this court's stay extends to a petition for writ of certiorari is incorrect. This court's Order was based on Fed. R. Civ. P. 62, which provides for stays pending appeal. A petition for discretionary review is not an appeal as of right. *See* Fed. R. App. P. 4 (procedure for taking appeal as of right)*; cf.* *Gomez v. State of N.M.*, 937 F.2d 616, *1 (10th Cir. 1991) (unpublished) (right to counsel does not extend to petitions for discretionary review). Thus, the process for obtaining a stay following issuance of the court of appeals' decision is described in Fed. R. App. P. 41(d). That rule provides that party seeking to stay the appellate court's mandate pending a petition for writ of certiorari "must show that the petition would present a substantial question and that there is good cause for a stay." The Tenth Circuit's denial of the motion for stay is the law of the case and is binding on this court.

Even if the Tribe were to ask the Supreme Court for a stay, the motion would almost certainly be denied. *See* *New York Times Co. v. Jascalevich*, 439 U.S. 1304, 1304 (1978) ("The standards for issuance of a stay pending disposition of a petition for certiorari are well established. Applicants bear the burden of persuasion on two questions: whether there is "a balance of hardships in their favor"; and whether four Justices of this Court would likely vote to grant a writ of certiorari.").

The Tribe has exhausted its appellate rights and its options for continuing the stay in effect. The judgment in this case was entered February 11, 2022 and bears an interest rate of 0.98%. The year-to-date yield of the Becker Litigation Reserve Fund (invested in

Federated Hermes Government Obligations Fund (GOIXX)) is 4.58%. Thus, the Tribe has every incentive to postpone the day of reckoning on this judgment.

For these reasons, this court should enter an order releasing the Becker Litigation Reserve Fund to Mr. Becker and Mr. Jurrius according to their respective interests, as follows:

To Mr. Jurrius: $95,550.66 as of December 6, 2023, plus per diem interest of $2.52 thereafter.

To Mr. Becker: $213,253.92 as of December 6, 2023, plus per diem interest of $5.63 thereafter.

Any remaining balance in the fund following these payments may be returned to the Tribe.

DATED: December 6, 2023.

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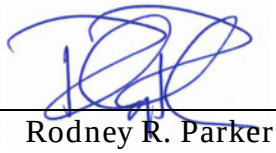

Rodney R. Parker
Attorneys for John P. Jurrius

CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2023, a true copy of the foregoing MOTION TO RELEASE FUNDS was served by the method indicated below, to the following:

David K. Isom ISOM LAW FIRM 299 S. Main Street, Ste. 1300 Salt Lake City, UT 84111 david@isomlawfirm.com	( ) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile (X) Electronic Filing
Frances C. Bassett Jeffrey S. Rasmussen Jeremy J. Patterson Thomasina Real Bird PATTERSON EARNHART REAL BIRD & WILSON, LLP 357 S. McCaslin Blvd., Ste. 200 Louisville, CO 80027 fbassett@nativelawgroup.com jrasmussen@nativelawgroup.com jpatterson@nativelawgroup.com trealbird@nativelawgroup.com	( ) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile (X) Electronic Filing
J. Preston Stieff J. PRESTON STIEFF LAW OFFICES 110 S. Regent St., Ste. 200 Salt Lake City, UT 84111 jps@stiefflaw.com	( ) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Overnight Mail ( ) Facsimile (X) Electronic Filing

/s/ Rodney R. Parker

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