



FREDERICKS PEEBLES & MORGAN LLP

ATTORNEYS AT LAW

CLASS ACTION SUIT DISMISSED AGAINST CHEYENNE AND ARAPAHO TRIBES

Martha L. King of Fredericks, Peebles & Morgan LLP in Louisville, Colorado recently secured a dismissal of a Fair Labor Standards Act (“FLSA”) class action. Plaintiffs were former employees of Lucky Star Casino (an enterprise of the Tribes) and claimed the Tribes, the Governor Janice Prairie-Chief Boswell, and Gloria Smith violated the FLSA by docking their pay when they worked fewer than 40 hours per week, failing to pay for hours worked in excess of 40 hours per week, and failing to pay overtime wages.

The Governor took the lead in overseeing preparation of the Joint, Consolidated Motion to Dismiss, the Memorandum in Support of the Joint Consolidated Motion to Dismiss, and the Reply. She argued the federal court lacked jurisdiction because the Cheyenne and Arapaho Tribes are entitled to sovereign immunity, which also cloaked Defendants Boswell and Smith. She also argued there was no jurisdiction for Plaintiffs to represent the purported class, Plaintiffs failed to exhaust tribal remedies, and Plaintiffs failed to state a claim.

The United States District Court for the Western District of Oklahoma agreed. It held the Tribes were immune “from private suit unless Congress ‘unequivocally expressed’ its intent to abrogate Indian tribes’ sovereign immunity under this statute,” and that Congress did expressly abolish the Tribes’ sovereign immunity with regard to claims brought pursuant to the FLSA. It went on to hold that Defendants Boswell and Smith were cloaked with sovereign immunity for actions taken in their official capacities, and that Plaintiffs failed to state a claim against Defendants Boswell and Smith in their individual capacities. It also stayed its hand with respect to hearing claims of alleged (and unsupported) violations of the Tribes’ Constitution and the United States Constitution.

Plaintiffs did not appeal.